

Volume 1

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable James Donato, Judge

DANIEL NORCIA, on his own)	
behalf and on behalf of all)	
others similarly situated,)	
)	
Plaintiffs,)	
)	NO. C 14-00582 JD
vs.)	
)	
SAMSUNG TELECOMMUNICATIONS)	
AMERICA, LLC, a New York)	
Corporation, and SAMSUNG)	
ELECTRONICS AMERICA, INC., a)	
New Jersey Corporation,)	
)	San Francisco, California
Defendants.)	Thursday, August 14, 2014
)	9:09 a.m.

TRANSCRIPT OF PROCEEDINGS

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1 **THE CLERK:** Please be seated. Calling Civil 14-582,
2 *Norcia versus Samsung Telecommunications America, LLC.*
3 Counsel, please state your appearances for the Court.

4 **MR. ROY:** Eduardo Roy, for Mr. Norcia, accompanied by
5 Mr. John Hurley.

6 **MR. HURLEY:** Good morning, Your Honor. John Hurley.
7 And Mr. Norcia's in the courtroom right now.

8 **MR. PHILLIPS:** Good morning, Your Honor. John
9 Phillips, for the Samsung defendants. My colleague, Mr. Unger.

10 **MR. UNGER:** Good morning, Your Honor.

11 **THE COURT:** Okay. Come forward, both sides. Excuse
12 all testifying witnesses.

13 **MR. HURLEY:** Does that include the party, Mr. Norcia?

14 **THE COURT:** If they're a witness, they're going to be
15 excluded until they finish testifying. Okay.

16 So, Samsung, you have the burden of establishing the
17 existence of the contract. So --

18 **MR. PHILLIPS:** Yes.

19 **THE COURT:** So make your offer of proof.

20 **MR. PHILLIPS:** Yes.

21 **THE COURT:** Opening offer, not argument.

22 **MR. PHILLIPS:** Yes. I read your Order, and I
23 understand it.

24 **THE COURT:** Okay.
25

OPENING STATEMENT

MR. PHILLIPS: Good morning, Your Honor. Good morning.

Today's evidence will prove that Mr. Norcia entered into a binding agreement.

THE COURT: Make your appearance again.

MR. PHILLIPS: I'm sorry. John Phillips, for the Samsung defendants, Your Honor.

Today's evidence will prove that Mr. Norcia entered into a binding agreement with Samsung when he purchased his Galaxy S4, and Samsung's one-year warranty on May 23rd, 2013. We will prove that point through four pieces of evidence.

First, Samsung included its Standard Limited Warranty inside the Galaxy S4 box that Mr. Norcia purchased on May 23rd, 2013. Every Galaxy phone like the one that Mr. Norcia purchased comes in a box that contains user-friendly brochures. One of those brochures is Samsung's Product Safety and Warranty item. The warranty contains a single-page table of contents with two bold headings. The second heading directs the customer to the warranty.

In that section, there are six bold headings. The sixth heading states, in bold type, "What is the procedure for resolving disputes?" The arbitration clause is the first sentence in that section, and all of the text appears in full caps. The class action waiver appears in the very next

1 sentence.

2 Mr. Norcia's declaration confirms that he knew he was
3 buying the box and everything in it, which includes the
4 warranty and all of its terms and conditions.

5 Second, Samsung informs customers like Mr. Norcia about the
6 phone's warranty through its website and product packaging.
7 Mr. Norcia admits in his Complaint that he reviewed the product
8 page on Samsung's website for his Galaxy phone. That product
9 page has six links under the "Ownership" heading. One of the
10 links directs customers to the Galaxy S4's User Guide. In that
11 User Guide the warranty section is clearly identified in bolded
12 table of contents, with separate colored font.

13 The online document is also a searchable pdf with
14 hyperlinks to each individual section, including the warranty
15 and all of its terms and conditions, which includes the
16 arbitration clause.

17 Another link on the website's product page directs
18 customers to Samsung's stand-alone two-page warranty, which is
19 a separate document. The two-page warranty is identical to
20 what's in the User Guide and identical to what's in the
21 warranty that comes in the box.

22 Mr. Norcia admits that he reviewed the product packaging;
23 in other words, the box that contained the phone. And the
24 packaging, itself, has seven bullets on the back side, and the
25 last bullet specifically mentions Samsung's warranty.

1 **THE COURT:** Now, on the box, itself?

2 **MR. PHILLIPS:** On the box, itself.

3 **THE COURT:** On the outside of the phone box -- the S4
4 box -- a bullet point says what?

5 **MR. PHILLIPS:** There is a heading. And we will
6 present that document through Mr. Rowden, our witness, that
7 says "Package Contents" in bold text.

8 **THE COURT:** Well --

9 **MR. PHILLIPS:** And under that heading are seven
10 bullets; and the last bullet specifically mentions Samsung's
11 warranty.

12 **THE COURT:** Okay.

13 **MR. PHILLIPS:** Third, Samsung's business relationship
14 with Verizon further ensures that customers like Mr. Norcia
15 receive Samsung's warranty and all of its terms and conditions.
16 Verizon requires Samsung to provide the one-year warranty on
17 the product or the equipment that is sold to the customer, and
18 they also require that that be included in the box. Verizon
19 has no discretion to remove that warranty from the box before
20 the customer buys it. And Verizon makes it clear in its
21 Customer Agreement that it is not providing the product
22 warranty, and that the product manufacturer is.

23 It also makes clear in its agreement that Mr. Norcia signed
24 that the customers should review all of the terms and
25 conditions of such third-party products who manufactured the

1 devices.

2 **THE COURT:** When does that happen? Before a customer
3 buys it, or after?

4 **MR. PHILLIPS:** In this case, it's before, because
5 Mr. Norcia signed on all of his agreements, and then purchased
6 the phone. And then his phone came out of the back room.

7 **THE COURT:** What did he sign? How was he told? I
8 know in your evidence -- but how was he told, "Look at this
9 before you sign the dotted line"?

10 **MR. PHILLIPS:** Ah, he was -- we'll get to that in
11 just a second, Your Honor, with the receipt.

12 **THE COURT:** Oh, okay.

13 **MR. PHILLIPS:** Verizon's website specific to the
14 Galaxy S4 is two pages long, with seven short links at the
15 bottom. One of those links is to, quote, "What's in the box?"
16 And when you click on that, you get to a similar list of
17 materials that's included in the box, similar to the one that's
18 on the product packaging. That, again, specifically references
19 the warranty.

20 Samsung's web -- excuse me. Verizon's website dedicated to
21 the Galaxy S4 also has a link to the User Manual, which, as I
22 mentioned, includes the warranty and the arbitration clause.

23 Verizon also requires Samsung to include a sticker on the
24 power cord that every customer walks out with -- and Mr. Norcia
25 walked out with his -- that has the number you can call to

1 obtain a warranty replacement for your phone.

2 Fourth, Mr. Norcia acknowledged his purchase of the
3 warranty and signed a document acknowledging that he had an
4 opportunity to review it. His two signed receipts that he had
5 received from Verizon confirmed that. And they're both dated
6 May 23rd, 2013. And that will be Exhibit 113. That's in the
7 binders we've provided to the Court.

8 Mr. Norcia's signed Customer Agreement receipt specifically
9 acknowledges his receipt of the one-year manufacturer's
10 warranty. The signed receipt confirms that Mr. Norcia agreed
11 to the purchase of the listed items, which includes the
12 warranty, quote, "which have been presented to me by the sales
13 representative, and which I have the opportunity to review."

14 Mr. Norcia's signed receipt also confirms his understanding
15 that, "I am agreeing to an Early Termination Fee per line" --
16 as reflected on this receipt -- comma, "limitations of
17 liability for service and equipment," which is the Galaxy S4,
18 comma, "settlement of disputes by arbitration and other means
19 instead of jury trials, and other important terms in the
20 Customer Agreement."

21 **THE COURT:** Well, that's on the receipt?

22 **MR. PHILLIPS:** Yes, sir. Exhibit 113.

23 **THE COURT:** Okay. Keep going.

24 **MR. PHILLIPS:** The title of the receipt, as you'll
25 see right at the top, is "Customer Agreement."

1 And on page 1 of that receipt, it specifically identifies,
2 about two-thirds of the way down, the Samsung warranty. The
3 last line on that receipt, above the words "Thank You," has
4 "Contract Acceptance Date: May 23rd, 2013."

5 Those receipts -- the Customer Agreement receipt, and the
6 equipment receipt -- as we learned yesterday when we received
7 these documents from plaintiffs' counsel, were e-mailed to
8 Mr. Norcia; both of those documents.

9 **THE COURT:** By Verizon?

10 **MR. PHILLIPS:** By Verizon.

11 One final piece of evidence. Mr. Norcia did not opt out of
12 the dispute-resolution procedure within 30 days, either by
13 sending an opt-out e-mail, or by calling the 800 number that's
14 identified on the warranty. And he had the opportunity to do
15 that within 30 days. He could have done so and, under the
16 terms of the warranty, still enjoyed the benefits of the
17 limited warranty. He simply would have opted out of the
18 arbitration provision. He did not return his phone; and
19 presumably still has it and uses it today.

20 The evidence that we'll present this morning, combined with
21 the legal authority already provided to the Court, will confirm
22 that Mr. Norcia entered into a binding agreement with Samsung,
23 accepted the terms of the warranty and all of its terms and
24 conditions, including the arbitration clause, and he was bound
25 by that clause. Thank you.

1 **THE COURT:** Thank you. Plaintiffs?

2 **OPENING STATEMENT**

3 **MR. ROY:** Good morning, Your Honor. Eduardo Roy, for
4 Mr. Norcia.

5 Your Honor, this trial is about one issue, and that is
6 whether there was a properly formed contract between Samsung
7 and Mr. Norcia in order to place any Complaint that Mr. Norcia
8 has about his Samsung Galaxy S4 phone in arbitration.

9 The Court is going to see three contracts as part of this
10 trial. Contract Number One is a contract between Verizon and
11 Mr. Norcia. They are the only parties in interest, and that is
12 for the purchase of the phone. There are no third-party
13 beneficiaries to that contract.

14 Contract Number Two is a Service Agreement between Verizon
15 and Mr. Norcia. They are the only parties in interest. There
16 is a third-party beneficiary to that, but it is not Samsung.

17 The third contract that will be discussed was never formed.
18 And it was never formed because it was never properly
19 communicated to Mr. Norcia; but beyond that, as Counsel said in
20 his opening, in every Samsung box there is a Warranty
21 Agreement. And the way that the purchase is conducted, Samsung
22 will never properly communicate an offer to any purchaser, and
23 a purchaser will never properly communicate an agreement, based
24 on the way the facts will come in.

25 So discussing the first contract --

1 **THE COURT:** Is that because they don't -- the
2 customer doesn't know prior to committing the purchase?

3 **MR. ROY:** Correct.

4 **THE COURT:** All right. All right.

5 **MR. ROY:** The first contract, Mr. Norcia walks into
6 Verizon store. He's greeted by a customer greeter. He tells
7 the greeter immediately that he wants a Samsung phone. He's
8 directed to the cashier. At that point, the cashier asks him
9 what phones he wants. He says "A Samsung 4," and he pays for
10 the phone.

11 Up to that point, there was no discussion with the cashier
12 or the greeter about any preconditions on the sale of this
13 phone. There was nothing about an Arbitration Agreement.
14 There was nothing about conditions that you might find in
15 the -- in the box. There was no presale notice that Mr. Norcia
16 should be aware of.

17 He pays for his phone. Once he pays for his phone, you
18 have the offer, you have the acceptance, consideration. And
19 the contract is done.

20 Now, Contract Number Two deals with a Service Agreement.
21 At that point, he enters into a two-year Service Agreement. He
22 pays for it. The contract is done. The two parties are
23 Verizon and Mr. Norcia. There's a third-party beneficiary,
24 which is -- Mr. Norcia bought -- bought an insurance plan for
25 the phone.

1 Now, once he purchased the phone, he's then directed to
2 another individual from Verizon. And that individual then goes
3 in the back, gets a box, pulls it out, opens the box, and sets
4 the phone up for Mr. Norcia. Mr. Norcia never touches the
5 phone, but it really wouldn't matter, because the contract was
6 complete on the purchase of the phone.

7 So now Mr. Norcia gives his old phone to the service
8 provider. They then download his information from his old
9 phone to his new phone. They ask him if he wants the box. He
10 says "No." And he walks out; out the store.

11 **THE COURT:** So he didn't take a -- he didn't take
12 anything out of the box. He didn't take a warranty. He didn't
13 take a User Manual. He didn't take any --

14 **MR. ROY:** No, he didn't take that.

15 **THE COURT:** Who walks out without a User Manual?

16 **MR. ROY:** Your Honor, under our facts, it really
17 doesn't matter. It doesn't matter if he had walked out with a
18 user box and a manual.

19 **THE COURT:** It may matter.

20 **MR. ROY:** Well, because the first transaction was
21 already complete. So now what -- what Samsung is doing is
22 running up behind, and trying to catch up, and slipping
23 something into the bag and saying, "I want a contract with you,
24 too."

25 **THE COURT:** This is argument.

1 **MR. ROY:** Yes, Your Honor.

2 **THE COURT:** I know I provoked this. This is your
3 offer of proof.

4 Is it "Norcia" or "Norcia"?

5 **MR. ROY:** Norcia.

6 **THE COURT:** He got to the two -- first two contracts
7 now.

8 **MR. ROY:** Mr. Norcia is going to say he never went on
9 to Samsung's website. He -- he's going to say that he never
10 looked at anything pertaining to Samsung or Verizon
11 regarding -- so Samsung's website is going to be totally
12 irrelevant in this trial.

13 And Mr. Norcia's going to say that he was offered the box
14 and the contents, he didn't need it, and he walked out.

15 That's it, Your Honor.

16 **THE COURT:** Okay. Thank you. All right.

17 Mr. Phillips, why don't you called your first witness?

18 **MR. PHILLIPS:** Our first witness is Tim Rowden.

19 Your Honor, we'll go get him from the witness room.

20 **THE COURT:** While you're getting him, let me make
21 sure I understand. So Samsung is moving to compel arbitration,
22 and under the Samsung warranty; not under the Verizon Service
23 Agreement?

24 **MR. PHILLIPS:** That's correct.

25 **THE COURT:** Okay.

1 **MR. PHILLIPS:** Your Honor, a housekeeping matter, if
2 I may. I've conferred with plaintiffs' counsel in advance.
3 Since we're all going to be referring to the same binder, may
4 we put one up for the witness?

5 **THE COURT:** Sure. Absolutely.

6 **MR. PHILLIPS:** (indicating).

7 **THE CLERK:** Mr. Rowden, if you'll please come forward
8 and take the witness stand. Please stand and raise your right
9 hand.

10 **TIMOTHY LANE ROWDEN,**
11 called as a witness for the Defendants, having been duly sworn,
12 testified as follows:

13 **THE WITNESS:** I do.

14 **THE CLERK:** Please be seated.

15 **THE WITNESS:** Thank you.

16 **THE CLERK:** Please state your full name for the
17 Court, and spell your last name.

18 **THE WITNESS:** Full name is Timothy Lane Rowden.

19 **THE CLERK:** One second. Let me turn those mics on.

20 **THE WITNESS:** Sorry.

21 **THE CLERK:** Okay.

22 **THE WITNESS:** Timothy Lane Rowden. Last name is
23 R-o-w-d-e-n.

24 **MR. PHILLIPS:** May we begin, Your Honor?

25 **THE COURT:** Please.

1 **MR. PHILLIPS:** Thank you.

2 **THE CLERK:** Thank you.

3 **DIRECT EXAMINATION**

4 **BY MR. PHILLIPS**

5 **Q.** Mr. Rowden, good morning.

6 **A.** Good morning.

7 **Q.** Two housekeeping issues. We've put a binder in front of
8 you that contains all of the exhibits submitted to the Court,
9 so if you need to reference exhibits numbers, you can use that.
10 And I promised the Court you wouldn't speak quickly this
11 morning.

12 **A.** Yes. I'll try and keep it slow.

13 **Q.** I'd like to start by asking you to describe a little bit
14 about your background and experience with Samsung. Excuse me.
15 How long have you been with the company?

16 **A.** I joined Samsung in 1999.

17 **Q.** And starting in 1999, can you give us a few sentences
18 about your job responsibilities?

19 **A.** Yeah. I started off as a product manager for accessories
20 and devices. And I worked in product management until 2010.
21 By 2010 I was a manager.

22 **THE COURT:** Mr. Rowden, just little slower. Okay?

23 **THE WITNESS:** Yeah. By 2010 I was managing all of
24 the product teams in the U.S., launching phones in the U.S.
25 market.

1 Between 2010 and 2014 I took on -- I managed the product
2 role. I maintained that, but also managed the Verizon account
3 as the general manager for six months, and then the AT&T
4 account for about one year during that time frame.

5 Currently I am Vice President of Category Manager, Samsung,
6 which is a new role, looking at products from a category
7 standpoint, such as mobile phones, versus by channel of
8 distribution.

9 Q. Okay. Thank you. Why don't you pull that microphone a
10 little bit closer to you, if you can?

11 THE COURT: Thank you, sir. When did you manage the
12 Verizon account?

13 THE WITNESS: It was around 2012.

14 THE COURT: Were you manager in May of 2013?

15 THE WITNESS: I'm sorry?

16 THE COURT: Were you managing the Verizon account in
17 May of 2013?

18 THE WITNESS: Yes.

19 THE COURT: You were.

20 BY MR. PHILLIPS

21 Q. Also, please make sure you give everybody a chance to
22 finish their sentence, so that the court reporter can get
23 everybody down.

24 A. Will do.

25 Q. Okay. Thank you. Lets focus in on the time you spent

1 working with Verizon. Can you -- can you give us a few more
2 sentences about some of your job responsibilities, in
3 particular, that relate to understanding the materials that are
4 developed before a product is launched?

5 **A.** Yes. So I was responsible for the account in that time
6 frame, but also the product team. The product team's
7 responsibility includes managing the roadmap, selling of the
8 products, getting them accepted by the carriers, taking them
9 through the lab process and approval process of Verizon, but
10 also all of the materials that go in the box: The packaging,
11 the literature, the chargers, the accessories, and the devices;
12 and then taking those, and launching them in the marketplace.

13 **Q.** Okay. Focusing a little more on the documents that you've
14 just mentioned, tell us a little bit more about your particular
15 involvement in developing that documentation for Verizon.

16 **A.** Well, there are several documents that go in the box,
17 including the artwork on the box, itself, as well as the
18 equipment in the box. So my team's responsible for ensuring
19 that all of the parts/materials are included in the box as part
20 of the finished good that is shipped to Verizon and to the
21 consumer, but also that everything is prepared on time, and
22 included, and meets both Samsung and Verizon's requirements.

23 **Q.** And focusing on your time as a team leader with Verizon,
24 did you become familiar with the specific documents that
25 Verizon developed regarding the release of the product line?

1 **A.** Yes. Myself and my team are responsible for everything in
2 the box. And we're kind of the final stop, in terms of
3 approving what the factory builds and produces in the final
4 finished goods.

5 **Q.** And what about Verizon's external materials: Its websites
6 and other documents that are generated about a product? Were
7 you involved in that?

8 **A.** Yes, most of the materials that Verizon creates around our
9 product where they use our documents as a source of
10 information. And once it's published either on a website or in
11 a store as a point-of-purchase material or brochures, we will
12 review those, as well, to ensure that there's accuracy in terms
13 of what we say about our product and what they say about our
14 product.

15 **Q.** And were you and your team involved in the documents that
16 were generated both by Samsung and Verizon specifically
17 regarding the release of the Galaxy S4 in April 2013?

18 **A.** Yes, we were very closely involved with that.

19 **Q.** With that background in mind, sir, I'd like to switch
20 subjects, and provide a short review of what's sold to
21 customers like Mr. Norcia when they buy a Galaxy S4 phone.
22 Okay? How does Samsung deliver the phone to customers when
23 they walk into a Verizon store?

24 **A.** Well, Samsung sells the phones and finished goods to
25 Verizon. And a Verizon sales rep will deliver the phone to the

1 customer in the store.

2 **Q.** And -- and what -- what materials are that phone included
3 in?

4 **A.** It comes in a box, so there's a main box. There's a
5 sleeve on the outside of the box. On both the sleeve and the
6 box is artwork. On the back of the sleeve that surrounds the
7 box there's a description of what's in the box, and materials
8 in the box.

9 **Q.** I'll ask you a few more questions about that, but
10 generally can you just describe the contents of the box?
11 Pretend we have one here, and sort of unpack it for us.

12 **A.** So, sure. So you would take the sleeve off. There are
13 two plastic seals that hold the box, from a security
14 standpoint. Those would be removed.

15 **THE COURT:** You don't have one here?

16 **MR. PHILLIPS:** I do not. We have the exhibit, which
17 I'll get to in just a moment.

18 **THE WITNESS:** You would lift the top of the box off.
19 First thing you would see is the phone, with a cardboard
20 holder. You remove the middle of that. You will see some
21 literature, which includes several materials. I believe it's
22 Exhibits 102 through 107 in the materials.

23 **BY MR. PHILLIPS**

24 **Q.** We'll get to that. Mm-hm. Okay. Let me start with the
25 artwork, since we've talked about it. Could you go to

1 Exhibit 101 in the tab, please, or in the binder?

2 **THE COURT:** Which one? 101?

3 **MR. PHILLIPS:** 101. Yes, Your Honor.

4 **Q.** Mr. Rowden, could you please describe this document and
5 its contents?

6 **A.** Exhibit 101 is the artwork on the box and for the sleeve.

7 **Q.** And does this describe the contents of the box that the
8 Galaxy GS4 that was sold in May of 2013 to Mr. Norcia?

9 **A.** Yes. The last page of the exhibit on the back indicates
10 the package contents, which includes the equipment, the
11 literature, and the warranty brochure.

12 **MR. PHILLIPS:** Okay. We offer that into evidence,
13 Your Honor.

14 **THE COURT:** It's admitted.
15 (Trial Exhibit 101 received in evidence.)

16 **MR. ROY:** No objection, Your Honor.

17 **THE COURT:** Yeah. It's admitted. Thank you.

18 **BY MR. PHILLIPS**

19 **Q.** Mr. Rowden -- and for the ease of everybody, I have a
20 blown-up --

21 **MR. PHILLIPS:** May I approach, Your Honor?

22 **THE COURT:** Of course.

23 **MR. PHILLIPS:** Thank you. I'm not sure if it's in
24 the binder, but I do have a blowup of the last page.

25 **THE COURT:** Hand it to Ms. Clark.

1 **MR. PHILLIPS:** Thank you.

2 (Whereupon a document was tendered to the Court.)

3 **THE COURT:** Is this the same as the last page?

4 **MR. PHILLIPS:** Is this already in the binder.

5 **THE COURT:** Yes.

6 **MR. PHILLIPS:** Okay. Thank you. Extra work.

7 **Q.** Could you focus on this page? And first of all,

8 Mr. Rowden, tell us where it appears on the box.

9 **A.** It's on the back of the box, on the sleeve.

10 **Q.** Okay. And starting in the upper left-hand corner, can you
11 describe for us the language that's there, and why it's there?

12 **A.** Yeah. Has the Samsung logo; the identification that it's
13 a box for the Samsung Galaxy S4. And then it has a header,
14 "Package Contains." And then it lists the items in the box,
15 which includes the phone, the battery, the chargers, their
16 headset, Quick Reference Guide, Global Support Guide, and the
17 Product Safety and Warranty Brochure.

18 **Q.** Okay. Why is that information under package contents
19 there?

20 **A.** It's to inform the consumer what they're purchasing when
21 they buy a Galaxy S4, and what's included in the box.

22 **Q.** And can you buy the phone without buying the contents of
23 what's in the box?

24 **A.** No, you cannot.

25 **Q.** Could you buy the phone without buying the warranty,

1 including all of its terms and conditions?

2 **A.** The warranty is part of the device. It comes with a
3 one-year warranty.

4 **Q.** Mr. Rowden, I'll confess in advance: I asked you to do
5 this for us, to speed it up, but could you quickly, for the
6 Court, cross-reference the exhibits that are in the binder to
7 the documents that are listed under "Package Contains"?

8 **A.** Yes, certainly. So Exhibit 102 is the Product Safety and
9 Warranty Information, which is the last item listed on the
10 "Package Contains" on the box.

11 103 and 104 -- Spanish and English -- is the Quick
12 Reference Guide, which is the third item from the bottom on the
13 back of the sleeve on the "Package Contains" list.

14 105 and 106 -- both Spanish and English -- is their Global
15 Support Information Guide, which is the second item from the
16 bottom.

17 And then 107 is a Consumer Information Guide. It's
18 provided by Verizon.

19 **Q.** And were all of those documents included in the box that
20 contained the Galaxy GS4 sold through Verizon in May of 2013?

21 **THE COURT:** Were they in the box, Mr. Rowden?

22 **THE WITNESS:** Yes, they were.

23 **THE COURT:** Were they under the phone?

24 **THE WITNESS:** Typically they're under the phone.

25 Some of the materials, depending on how they are assembled, can

1 be on top of the phone when you first open it; but typically
2 the phone is the first thing you would see. You would lift
3 that up with a cardboard holder, and then you would see the
4 materials.

5 **BY MR. PHILLIPS**

6 **Q.** Mr. Rowden, I'd like to focus specifically now on
7 exhibit --

8 Well, before I do, just a housekeeping. I'd like to offer
9 those exhibits into evidence, Your Honor.

10 **THE COURT:** Admitted.

11 (Trial Exhibits 103 through 107 received in evidence.)

12 **THE CLERK:** I'm sorry. What were the exhibits
13 numbers?

14 **THE COURT:** 102 through 107.

15 **THE CLERK:** 102, or -3?

16 **THE COURT:** 102 to 107.

17 **THE CLERK:** Thank you.

18 **BY MR. PHILLIPS**

19 **Q.** Focusing specifically on Exhibit 102, Mr. Rowden, do you
20 have that open in your binder?

21 **A.** I do.

22 **Q.** You mentioned briefly the Product Safety and Warranty
23 Brochure identified on the box. What is this document?

24 **A.** It's a document that informs the consumer about the
25 product RF performance, and RF usage of the device, any health

1 concerns, safety of the user's device, and the warranty
2 information about the device.

3 Q. And was this the specific warranty in effect in May of
4 2013, when Mr. Norcia purchased his phone?

5 A. Yes, it was.

6 Q. Let's start on the title page there, which -- if you look
7 at the bottom, in the middle is .001. What information is
8 there?

9 A. It's the title, "Product Safety and Warranty Information."
10 And it identifies it as being part of the Galaxy S4 product.

11 Q. And could you flip to the next page, sir, which is .002,
12 and read the language under the heading, "Health & Safety and
13 Warranty Guide"?

14 A. It says, "Please read this manual before operating your
15 phone, and keep it for future reference."

16 Q. And why did Samsung include that language in the warranty?

17 A. Well, it's information that's important to understand as
18 being an owner of the Galaxy S4.

19 Q. Okay. So imagine I'm a new owner, and I've got this
20 booklet in my hand. Describe for me the steps that Samsung
21 took to direct me to the warranty section of this brochure that
22 comes with the phone.

23 A. Okay. So the user immediately knows this contains the
24 warranty, because that's the title of the book. And then if
25 you go to the table of contents, which is page 2 or double 07.

1 Q. Give everyone a second to catch up.

2 A. Okay.

3 Q. Please proceed.

4 A. Okay. You see table of contents, and there are two
5 headings. One is "Health & Safety Information," Section One.
6 And Section Two is the "Warranty Information."

7 Q. And why is that --

8 Why is Section One and Section Two in bold?

9 A. Because we believe those are two key areas of the consumer
10 would gravitate towards.

11 Q. And does the warranty section contain information about
12 how a customer could resolve a dispute if he had an issue with
13 Samsung?

14 A. Yes, it does.

15 Q. And then how does Samsung direct a consumer to that
16 section of the warranty?

17 A. They would go to page 70, as indicated in the table of
18 contents. So coming to page 70. So that's dot 041, page 70.
19 And the warranty is broken up into six sections, each
20 identified by a bold header. The sections are:

21 What is not covered?

22 What are Samsung's obligations?

23 What must you do to obtain warranty service?

24 What are the limits on Samsung's liability?

25 And what is the procedure for resolving disputes?

1 And severability at the end.

2 Q. Let me stop you there. What page of Warranty Guide is the
3 heading that says, "What is the procedure for resolving
4 disputes?"

5 A. Page 76, or dot 044.

6 Q. Thank you. And what terms are included in this
7 dispute-resolution clause?

8 A. So the header's in bold. And then below that, in all
9 caps, it explains to the user how to resolve disputes, and that
10 those disputes are resolved through arbitration.

11 Q. And what's next in that section?

12 A. Next paragraph following the arbitration statement is a
13 class-action waiver, which is in the following paragraph.

14 Q. And there are additional terms after that?

15 A. Of course. Yes. More details about how -- the process we
16 follow.

17 Q. And stepping back from the details of the warranty and, in
18 particular, the dispute-resolution clause, why is this booklet
19 included in the box that is sold to consumers like Mr. Norcia?

20 A. Well, it gives the user the information they need to
21 understand how to use the device safely, and also how to make a
22 warranty claim or resolve a warranty issues.

23 Q. And does -- does that philosophy apply to all of the terms
24 in the warranty, including the arbitration clause and the
25 class-action waiver you mentioned?

1 **A.** Yes, it does.

2 **Q.** And based on your knowledge of its business practices that
3 you describe for us, does Verizon have the discretion to remove
4 this warranty from the box before it is provided to customers
5 like Mr. Norcia?

6 **A.** No, they do not. The phone is sold with the warranty.

7 **Q.** Mr. Rowden, I'd like to switch subjects now, and talk
8 about other ways that Samsung provides warranty to its
9 customers or otherwise makes it known that it's available to
10 them. Okay?

11 **THE COURT:** Let me ask you a couple of questions.

12 **THE WITNESS:** Yes, sir.

13 **THE COURT:** So, thinking of the materials that
14 Samsung puts in the box, is there any other reference in those
15 boxed materials to dispute resolution by arbitration or
16 class-action waiver, other than pages 76 and 77 in the
17 warranty?

18 **THE WITNESS:** Within the box? No, there's not.

19 **THE COURT:** Okay. And does Samsung require Verizon
20 to direct potential purchasers of the S4 to the arbitration and
21 class-action provisions before a purchase is made?

22 **THE WITNESS:** No, we do not.

23 **THE COURT:** Sorry?

24 **THE WITNESS:** We do not.

25 **THE COURT:** Okay. Does Samsung require Verizon to

1 inform potential purchasers that they have the right to opt out
2 of the arbitration clause before the purchase?

3 **THE WITNESS:** No. They're not required to do that.

4 **THE COURT:** Okay.

5 **MR. PHILLIPS:** Thank you.

6 **THE WITNESS:** May I add that after purchase, the user
7 does have 30 days to opt out. So it does not -- the decision
8 doesn't have to be made at the time of purchase.

9 **MR. PHILLIPS:** Thank you.

10 **Q.** Beyond the box that we've just discussed and the box's
11 contents -- specifically, the Warranty Guide, how many other
12 primary ways does Samsung direct customers to the warranty that
13 comes with the Galaxy S4?

14 **A.** Primary way. One of the primary ways is the brochure
15 that's in the box. The warranty. We also do it via our
16 website. So any consumers doing research on our product will
17 have access to understanding the warranty and what's in the box
18 on the website. And also we have a web page that has the full
19 warranty reproduced.

20 **Q.** Okay. Is the User Guide also available through other
21 means?

22 **A.** Yes, it is. It's available through our website; or a
23 consumer can request a copy, as well.

24 **Q.** Okay. Well, let's quickly march through those one at a
25 time. Can you turn to Exhibit 110, please? What is this

1 document, Mr. Rowden?

2 **A.** This is a copy of the web page that actually describes the
3 product features. And then it gets to the Galaxy S4.

4 **Q.** And is this the same Galaxy S4 or the version of the
5 Galaxy S4 that Mr. Norcia purchased?

6 **A.** Yes, it is.

7 **Q.** And was this information on Samsung's website regarding
8 the ownership features of the phone available in May 2013?

9 **A.** Yes, it was.

10 **MR. PHILLIPS:** We offer that, Your Honor.

11 **MR. ROY:** Objection, Your Honor. Lacks foundation.

12 **THE COURT:** Overruled. Admitted.

13 (Trial Exhibit 110 received in evidence.)

14 **THE COURT:** Mr. Rowden, so 110, though, is just
15 Samsung's website. Right?

16 **THE WITNESS:** Yes, it is, sir.

17 **THE COURT:** Okay. So does Samsung direct Verizon to
18 visit -- customers to go to this website?

19 **THE WITNESS:** We do not. No.

20 **THE COURT:** Okay.

21 **BY MR. PHILLIPS**

22 **Q.** What is the purpose of this web page, Mr. Rowden?

23 **A.** It's to inform consumers. Consumers typically do research
24 about devices before they purchase them. And either they can
25 go to the Samsung website or the Verizon website to learn about

1 the devices.

2 Q. Okay. Let's focus on the first page of this document.

3 And I'll direct your attention down to the "Ownership" heading.

4 A. Yes.

5 Q. Now, what information is there, generally; and then why is
6 it there?

7 A. It's to give the consumer information about the device,
8 either in preparation to own the device, or as an owner of the
9 device.

10 Q. And -- and what specific headings are in there for the
11 consumer?

12 A. "Product Support." And they would click that. And then
13 under that would be "Owner's Manual," so they can download a
14 pdf of the Owner's Manual.

15 It has a simulator of the device, so they can learn about
16 the device and how to use it. A direct to the warranty, to
17 understand what's covered on the device, and how the warranty
18 works. F.A.Q. How-to guides about the device. And then
19 troubleshooting, if they have any concerns.

20 Q. And where do those links to the Owner's Manual and the
21 Warranty appear on this website? What page numbers or what?

22 A. Oh, page -- I'm sorry -- dot 002.

23 Q. Basically, the second page in?

24 A. Second page of the website. Well, actually, the way this
25 is, I think they would scroll down.

1 Q. Sure, but for our purposes --

2 A. It's the second page. Right.

3 THE COURT: Okay. So if a consumer is -- you said --
4 doing research, and they wanted to check out the S4, this is
5 the web page that they would see. Is that right?

6 THE WITNESS: Yes, it is.

7 THE COURT: If they went on line for Galaxy S4 at
8 Samsung, they would get --

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: Nowhere -- does any portion of this, you
11 know, I think I may have said this. This is the web page in
12 existence in May of 2013 or 2013 generally?

13 THE WITNESS: Yes. It was similar to this.

14 THE COURT: Okay. Where -- where -- is there any
15 reference in the website for the S4 in Exhibit 110 to
16 arbitration or dispute resolution?

17 THE WITNESS: On this page, no, they click the
18 warranty link. That will take them to --

19 THE COURT: Well, but on the pages I have here that
20 have been presented as the screenshots, in -- in Exhibit 110,
21 is there anything other than a click-through to the warranty
22 that says, "You will be subject to arbitration or class-action
23 waiver"?

24 THE WITNESS: No, there's not, sir.

25 THE COURT: Okay. So to find that, a consumer would

1 have to somehow know to click through to the warranty, and then
2 go to page 76. Right?

3 **THE WITNESS:** Yes, to understand how the warranty
4 works. Yes.

5 **THE COURT:** Okay. All right. Okay. Go ahead.

6 **BY MR. PHILLIPS**

7 **Q.** Mr. Rowden, could you turn to Exhibit 109?

8 **A.** Okay. I'm there.

9 **Q.** Could you connect that document up --
10 First tell us what it is, and then connect it up to
11 Exhibit 110 that we just looked at.

12 **A.** This is a printout of the Galaxy S4 User Manual.

13 **Q.** Okay. And how does that connect up to Exhibit 110 that we
14 just looked at?

15 **A.** So on Exhibit 110 there's a link to the Owner's Manual.
16 If you click that, it would pull up this document. And this
17 document could either be viewed online as is, or could be
18 downloaded as a searchable pdf.

19 **Q.** And focusing on this User Guide, Mr. Rowden, was this the
20 version in effect in May of 2013 that a consumer could review
21 if they clicked on the User Guide link?

22 **A.** Yes, it was.

23 **MR. PHILLIPS:** We offer that.

24 **MR. ROY:** Objection, Your Honor. Lack of foundation.

25 **THE COURT:** It's admitted.

1 (Trial Exhibit 109 received in evidence.)

2 **MR. PHILLIPS:** Thank you.

3 **BY MR. PHILLIPS**

4 **Q.** Before turning to the details of this document,
5 Mr. Rowden, could you describe its role in communicating
6 important terms and conditions to consumers?

7 **A.** Yes. This document describes how to use the device, as
8 well as any information about the warranty and how to exercise
9 the warranty for the device.

10 **Q.** Okay. Let's focus on the first page, and read the
11 language under "Android Smartphone," and tell us how that
12 language accomplished that goal.

13 **A.** That says, "User Manual." It says, "Please read this
14 manual before operating this phone, and keep it for future
15 reference." So if basically the user has any questions about
16 the device, warranty, how to operate, and how to make phone
17 calls, this served as a reference for them.

18 **Q.** And where else does this language appear in the documents
19 we've looked at?

20 **A.** It also appears on the Health, Safety, and Product
21 Warranty Guide.

22 **Q.** And that was where?

23 **A.** Inside the box.

24 **Q.** And you've mentioned the online version -- the searchable
25 pdf -- and the hard copy. Let's take those one at a time, and

1 tell us what steps Samsung takes to direct consumers to the
2 warranty and the dispute-resolution clauses.

3 **A.** Okay.

4 **Q.** Let's start with the searchable pdf you mentioned.

5 **A.** So the online version is to be downloaded by the document
6 where it's on the web page. You can -- first method is to go
7 to the table of contents which starts on page 1, and goes
8 through --

9 **THE COURT:** Well, let me stop you there. Sorry. So
10 what is 109? Is 109 the web-page version you click through, or
11 is it a hard copy you get?

12 **THE WITNESS:** Oh. You would get a web version, or a
13 downloadable pdf.

14 **THE COURT:** Okay. So if you're on -- your website is
15 110. And you click through User Manual. You would see 109.
16 Is that right?

17 **THE WITNESS:** You would. Yes, sir.

18 **THE COURT:** Okay.

19 **THE WITNESS:** When you're there, you have the option
20 to review it in your web browser, or you can download it.

21 **THE COURT:** Or download it.

22 **BY MR. PHILLIPS**

23 **Q.** So please continue, Mr. Rowden.

24 **A.** So you would go to table of contents. So that starts on
25 page 1, so dot 007, and goes through page 5, dot 011. And on

1 there you can see the list of all different topics about the
2 device. And also listed is the Health & Safety information,
3 and warranty information, which was also in the box.

4 **Q.** So take us to page 5 of the User Manual. It's dot 011 of
5 Exhibit 109. So if I'm in here in the searchable version on my
6 computer, how would I get to the warranty information?

7 **A.** If you're on this page, the easiest way is just to click
8 "Warranty," and it takes you directly to the warranty
9 information.

10 **Q.** And once I'm in that section, what steps does Samsung take
11 to direct consumers to the arbitration clause?

12 **A.** So we'll flip to page -- to the warranty section.
13 Obviously, I don't have hard copies. It's a little different.

14 **THE COURT:** Well, Mr. Rowden, in the index to 109 --

15 **THE WITNESS:** Yes, sir. Yes, Your Honor.

16 **THE COURT:** -- where is there a listing for the page
17 that discusses arbitration and dispute resolution?

18 **THE WITNESS:** There is not explicitly a listing.
19 It's covered under the "Warranty" heading. It's part of the
20 warranty terms and conditions.

21 **THE COURT:** Okay. Is there a -- an index reference
22 in 109 to class-action waiver?

23 **THE WITNESS:** There is not.

24 **THE COURT:** All right. And in the index -- I'm
25 sorry -- table of contents, is there a reference to the table

1 of contents in 109 to class-action waiver?

2 **THE WITNESS:** There is not, Your Honor.

3 **THE COURT:** All right. Now, turning to the index at
4 the end of the document, is there an index entry for
5 arbitration?

6 **THE WITNESS:** There is not, Your Honor.

7 **THE COURT:** Is there an index entry for class-action
8 waiver?

9 **THE WITNESS:** There is not, Your Honor.

10 **THE COURT:** All right. So what in the table of
11 contents or the index alerts a user or potential user that the
12 arbitration clause in the class-action waiver exists?

13 **THE WITNESS:** Oh, nothing specifically, other than
14 it's part of the warranty description: Terms and conditions of
15 the warranty. So the warranty would encompass anything related
16 to class-action waiver; arbitration; how to make claims.

17 **THE COURT:** Okay.

18 **THE WITNESS:** Things like that.

19 **THE COURT:** All right.

20 **MR. PHILLIPS:** And since you're there in the back of
21 the document, page 217, does that index also contain a
22 reference to the warranty?

23 **THE WITNESS:** Yes, it does. It does.

24 **BY MR. PHILLIPS**

25 **Q.** So let's go back to the warranty section that you directed

1 us to, and describe for us the steps that Samsung takes to
2 direct consumers to the terms and conditions of the warranty;
3 in particular, the arbitration clause.

4 **A.** So the warranty's similar to the one out of box. In fact,
5 it's identical. It's organized by a series of headings, and
6 the headings are in bold. And the consumer would look through
7 the headings, and find the one, in terms of -- that talks about
8 dispute resolution, which should be the fifth heading. And
9 under there, it would describe the arbitration in all-caps
10 letters, and the class-action-waiver information.

11 **Q.** So how does the structure and layout of the
12 dispute-resolution clause in the User Manual compare to the
13 structure and layout of the dispute-resolution clause in the
14 warranty booklet provided with the phone?

15 **A.** It's identical.

16 **Q.** So I'd like to back out a level now, Mr. Rowden, and let's
17 go back to Exhibit 110, which was the web-based product page
18 that we had. And there were several links there. You
19 mentioned one of the User Manual, and you've just walked us
20 through that. Is there a specific link to the warranty,
21 itself?

22 **A.** Within the User Manual? Yes, there is.

23 **Q.** No, no. Within Exhibit 110, which is the web page that we
24 mentioned. Could you go back to Exhibit 110, please?

25 **A.** Yes. I'm sorry. Yeah, there's a specific link to the

1 warranty.

2 Q. Okay. And when you click on that link, what document does
3 it take you to?

4 A. It takes you to the warranty.

5 Q. And let me direct you to Exhibit 108. How many pages is
6 this document, Mr. Rowden?

7 A. It's two pages.

8 Q. And was this the warranty in effect in May of 2013, when
9 Galaxy S4 phone was sold through Verizon?

10 A. Yes, it was.

11 MR. PHILLIPS: I'd offer that, Your Honor.

12 THE COURT: Admitted.

13 (Trial Exhibit 108 received in evidence.)

14 BY MR. PHILLIPS

15 Q. I think we know the answer, Mr. Rowden. Could you
16 generally describe this document for us?

17 A. Yeah. It's the same as the document we looked at in the
18 User Guide, as well as the one in the box. It has bold
19 headings for each of the key topics, including how to resolve
20 disputes. And it describes the arbitration, as well as the
21 class-action waiver.

22 Q. Okay. And where does the heading -- at least, on this
23 printout version -- appear on this two-page warranty that
24 Samsung provides to all of its customers?

25 A. It appears on the first page. The heading on that page.

1 Q. Since we've gone through the language, how does the
2 structure and layout of this two-page warranty compare to the
3 structure and layout of the warranty that's in the User Guide
4 and the warranty that comes in the box?

5 A. It's identical.

6 THE COURT: All right. Let me -- I got lost. Let's
7 go back to 110. Okay. Your web page.

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: So show me where you click in 110 to pull
10 up 108.

11 THE WITNESS: So it's on the second page, dot 002.

12 THE COURT: All right.

13 THE WITNESS: On the upper right-hand corner it says,
14 "Exclusive owner benefits." There's an underlined word:
15 Warranty. You would click there.

16 THE COURT: So if you click "warranty," find out
17 what's covered, it will take you to 108?

18 THE WITNESS: 108. And -- and both the User Manual
19 and the warranty, if you -- and any word like "arbitration," it
20 will take you directly to that word.

21 THE COURT: Where did you type that in?

22 THE WITNESS: When you have a pdf document open, you
23 just -- there's a search bar.

24 THE COURT: What if you're in the -- what if you're
25 in the website of 110? Is there any way to search the word

1 "arbitration"?

2 **THE WITNESS:** Yes.

3 **THE COURT:** How do you do that?

4 **THE WITNESS:** There would be a window that has a --
5 like, a magnifying glass or a search.

6 **THE COURT:** That's shown here?

7 **THE WITNESS:** No, I don't think we had reproduced the
8 actual web page, itself.

9 **THE COURT:** Well, what -- so if you enter a search
10 term on Exhibit 110, and if you type in the word about
11 "arbitration," you're saying that that would take you to the
12 arbitration clause in the warranty?

13 **THE WITNESS:** If you were within the warranty page?

14 **THE COURT:** No, no. If you're in the website here.
15 Just in the website. You're looking at the phone. You haven't
16 clicked through on any of the links. You're just in that
17 website. If you type in the word "arbitration," what happens?

18 **THE WITNESS:** I do not know what would happen.

19 **THE COURT:** All right.

20 **BY MR. PHILLIPS**

21 **Q.** Once you're in the searchable version of the online User
22 Manual, is there a way that you can search for a specific
23 words?

24 **A.** Yes. That's what I was referring to.

25 **Q.** And if you typed in "warranty," and hit "search," where

1 would you go inside the document?

2 A. It would take you to the warranty, or anywhere the word
3 "warranty" is mentioned.

4 Q. And if you typed in the word "dispute," where would it
5 take you?

6 A. It would take you to the word "dispute" within the
7 document.

8 Q. And the same for "arbitration"?

9 A. Correct.

10 Q. Let me go briefly to Exhibit 103, which is in evidence.
11 Could you go to the second page there: Dot 002?

12 A. Okay. I'm there.

13 Q. And this is one of the other documents that's in the box
14 provided to customers. Correct?

15 A. Yes, it is.

16 Q. And what language included on this page directs consumers
17 to the User Manual?

18 A. Towards the bottom of the page, there's a paragraph, and
19 it states the user has available, on demand, that download.
20 And it gives the Verizon website to download it.

21 Or you can call an 888 number, which is a Samsung
22 customer-service number, to order a copy -- hard copy -- of the
23 User Guide.

24 Q. And go to the last page: Dot 020. What language is in
25 this page of the document to direct consumers to important

1 terms and conditions?

2 **A.** The first paragraph -- the last sentence of the first
3 paragraph tells a consumer to carefully review all terms and
4 conditions and policies prior to using the wireless device.

5 **Q.** Stepping back from the details of these documents,
6 Mr. Rowden, why does Samsung include the warranty and all of
7 its terms?

8 **THE COURT:** Well, before we do that --

9 **MR. PHILLIPS:** Yes.

10 **THE COURT:** -- where in Exhibit 103, Mr. Rowden, is
11 there mention of arbitration?

12 **THE WITNESS:** There is no specific mention of
13 arbitration in 103.

14 **THE COURT:** Where is there mention in 103 of a
15 class-action waiver?

16 **THE WITNESS:** There is no specific mention in 103,
17 Your Honor.

18 **THE COURT:** All right. Go ahead, Mr. Phillips.

19 **MR. PHILLIPS:** Thank you, sir.

20 **Q.** Why does Samsung include the warranty, its terms and
21 conditions, and the arbitration clause in these three different
22 documents: In the booklet that comes with the phone, in the
23 User Manual, and as a separate two-page warranty that's
24 available on the product page for GS4?

25 **A.** It's to make it as easy as possible for the user to access

1 that information.

2 Q. And when you buy the phone, are you buying the warranty,
3 as well?

4 A. The phone comes with a warranty. They're not separable.

5 Q. And when is the warranty and all of its terms and
6 provisions -- when does it kick in? When does it apply?

7 A. The date the consumer purchases the device.

8 Q. And how long is the warranty in effect?

9 A. One year.

10 THE COURT: Does anything on the box say to the
11 consumer --

12 I'm going to ask for a box. Does anybody ask for a box?

13 -- say to the consumer, "Please read and review the
14 enclosed warranty prior to purchase?"

15 THE WITNESS: On the inside?

16 On the box, itself? No.

17 THE COURT: On the outside of the box.

18 THE WITNESS: No, there's not.

19 THE COURT: Is there anything on the outside of the
20 box? I'm talking about the box and the sleeve. Anything
21 external?

22 THE WITNESS: Sure.

23 THE COURT: Does anything external on the box tell
24 the consumer about the arbitration provision?

25 THE WITNESS: No.

1 **THE COURT:** Does anything on the box tell the
2 consumer about the class-action-waiver provision?

3 **THE WITNESS:** No, Your Honor.

4 **THE COURT:** Does anything on the box direct the
5 consumer to consider dispute resolution -- Samsung's
6 dispute-resolution requirements prior to purchase?

7 **THE WITNESS:** Nothing on the outside of the box,
8 Your Honor.

9 **THE COURT:** All right. Mr. Phillips.

10 **MR. PHILLIPS:** Thank you.

11 **Q.** I'd like to switch subjects, Mr. Rowden, and focus back on
12 your experience and knowledge about Verizon's business
13 practices, and ask what steps did -- from your knowledge, what
14 steps did Verizon take to inform consumers about the
15 availability of the warranty that attaches to the GS4 when it
16 sold to consumers?

17 **MR. ROY:** Objection. Lacks foundation. We were
18 interested in what they were doing in March of --

19 **THE COURT:** Why don't you lay a little foundation?

20 **MR. PHILLIPS:** Thank you.

21 **Q.** Mr. Rowden, building on the testimony you offered us at
22 the beginning, could us tell us a little bit more about your
23 experience and background in understanding of Verizon's
24 business practices regarding the steps it took to provide
25 information to consumers?

1 **A.** Yeah. I'm working closely with Verizon in understanding
2 how they roll out products and launch products in the
3 marketplace. One of the first things they would do is create
4 the website for their product page; and that, similar to
5 Samsung's, provides information on the product, as well as rate
6 plans specific to Verizon service. And within there, you can
7 also access can a customer-support information which can direct
8 you --

9 **THE COURT:** Let me just stop you. So the question
10 is -- you've been asked to describe what Verizon does.

11 **THE WITNESS:** Okay.

12 **THE COURT:** What they do to inform customers about
13 the existence of a warranty. GS4.

14 And the objection was: How do you know that?

15 So you need to say a little bit about your -- why your
16 familiar with what Verizon does with customers at the point of
17 sale. Okay?

18 The website stuff, I'm not that interested in.

19 I want to know what happens, if you know. And maybe you
20 can't testify to that. But tell me whether you do have the
21 ability to testify about what Verizon does at the point of sale
22 with respect to communicating the existence of the S4 warranty.
23 Do you know anything about that?

24 **THE WITNESS:** I do not know specifics about how they
25 communicate the warranty.

1 **THE COURT:** Does Samsung provide scripts or sales
2 scripts to Verizon sales reps?

3 **THE WITNESS:** No, we do not.

4 **THE COURT:** Okay. Does Samsung review any sales
5 scripts of Verizon prepares for its own employees?

6 **THE WITNESS:** No, we do not have sales scripts. No,
7 sir.

8 **THE COURT:** You don't know, one way or the other,
9 really, what Verizon does or does not do with respect to
10 telling customers about the warranty at the point of sale. Is
11 that right?

12 **THE WITNESS:** No, I do not.

13 **THE COURT:** Okay. Let's move on.

14 **BY MR. PHILLIPS**

15 **Q.** Okay. Mr. Rowden, could you go to Exhibit 115, please?

16 **A.** I'm there.

17 **Q.** Okay. Could you describe generally what this is?

18 **A.** It's a dot 001. And it's an image of the labels that are
19 attached to the charger cable that comes in the box.

20 **Q.** Okay. And did this charger cable and the label come in
21 all boxes that contained the Galaxy S4 sold through Verizon's
22 network in May of 2013?

23 **A.** Yes, they did.

24 **MR. PHILLIPS:** We offer this photo, Your Honor.

25 **THE COURT:** Admitted.

1 (Trial Exhibit 115 received in evidence.)

2 **BY MR. PHILLIPS**

3 **Q.** Okay. Mr. Rowden, why is that sticker on the power cord?

4 **A.** Well, one is to talk about -- talk about how to connect
5 your phone to the computer. And the second one is to talk
6 about how to get a warranty replacement for your device, and a
7 number to call.

8 **Q.** Ah. And was that sticker attached to all of the power
9 cords?

10 **A.** Yes, it was.

11 **Q.** Mr. Rowden, could you summarize for us, then, the ways
12 that Samsung informs customers about the warranty, and the
13 terms and conditions that are sold with the phone?

14 **MR. ROY:** Objection. Calls for a narrative.

15 **THE COURT:** Go ahead. Overruled.

16 **MR. PHILLIPS:** Thank you.

17 **THE WITNESS:** First way is through the website. And
18 we inform the consumer, and give them opportunities to read the
19 warranty, view the warranty, as well as the User Guide, which
20 contains the warranty.

21 We also include it in the box through the Product Safety
22 and Warranty Information Guide. And that -- the way it's
23 packed is you actually have to remove that guide to get to the
24 accessories within the box, so it's "stacked," so to speak.

25 And we also provide the warranty either by mail, or pdf

1 downloadable format. They can search and look for information
2 about the warranty.

3 **THE COURT:** And what specifically, though, does
4 Samsung do to vies potential or actual customers about the
5 arbitration provision?

6 **THE WITNESS:** We provide the warranty to that extent.

7 **THE COURT:** But other than saying, "Here's the
8 warranty," does Samsung do anything more specific with respect
9 to alerting people to the arbitration provision?

10 **THE WITNESS:** No, other than making it bold and in
11 all caps within the warranty, we do not do anything beyond
12 that.

13 **THE COURT:** Okay. And what does Samsung do to alert
14 potential or existing customers to the class-action waiver?

15 **THE WITNESS:** We make it available to them through
16 the warranty. We don't call it out specifically.

17 **THE COURT:** Just like arbitration, it's in the
18 warranty; but you don't call it out in any special way?

19 **THE WITNESS:** That's true. Yes, sir. Yes,
20 Your Honor.

21 **THE COURT:** Okay.

22 **BY MR. PHILLIPS**

23 **Q.** And what does a customer have to do to agree to the terms
24 and conditions in the warranty?

25 **A.** Purchase the device.

1 Q. It's that easy?

2 A. Yes, it is.

3 Q. And what could a customer like Mr. Norcia do if he didn't
4 want to agree to the terms and conditions of the warranty?

5 A. He could not purchase the device; or return the device.

6 Q. And if, after or during the 30-day period that you've told
7 us about earlier, Mr. Norcia decided to opt out of the
8 arbitration clause, what steps does Samsung take to allow him
9 to do that?

10 A. He could opt out and still maintain the full warranty
11 benefits. He would just need to make a phone call to
12 Samsung -- and that number is provided -- or send an e-mail to
13 Samsung and opt out at sta.samsung.com. Either one of those
14 routes would allow him to opt out on arbitration, and still
15 maintain his full warranty, no penalty.

16 Q. And what if Mr. Norcia dialed the phone number on the
17 sticker on his power cord that he walked out of the store with?

18 A. He would get a Verizon customer-service number. And they
19 would help him, just like Samsung would.

20 Q. Could you just start over, and give us a complete answer
21 on that, please, and speak slowly?

22 A. Yeah. So we want to make it convenient for the customer.
23 So the customer, if they have a warranty claim or questions
24 about the warranty, can call Verizon, through this (866)
25 number, or Samsung directly. And we work closely with Verizon

1 on the back end to provide all of that support for the
2 convenience of the customer. So they would get the same
3 support from either number: Samsung or Verizon.

4 **MR. PHILLIPS:** Thank you, Mr. Rowden.

5 No further questions, Your Honor.

6 **THE COURT:** So what does Samsung do, Mr. Rowden, to
7 tell consumers about the opt-out right?

8 **THE WITNESS:** We make it available in the warranty
9 information.

10 **THE COURT:** So, I mean, it's -- it's in the warranty?

11 **THE WITNESS:** Correct.

12 **THE COURT:** What other steps, if any, does Samsung do
13 to tell folks, "You can opt out of that arbitration clause"?

14 **THE WITNESS:** We don't call it out specifically. We
15 just make it available on multiple locations.

16 **THE COURT:** Okay. All right. We're going to take a
17 five-minute recess, and then we'll do cross.

18 **THE CLERK:** All rise.

19 (Recess taken from 10:10 a.m. until 10:17 a.m.)

20 **THE CLERK:** Please be seated.

21 **THE COURT:** Okay. Mr. Roy.

22 **MR. ROY:** Thank you, Your Honor.

23 **CROSS-EXAMINATION**

24 **BY MR. ROY**

25 **Q.** Good morning, Mr. Rowden. Is that how you pronounce your

1 name?

2 **A.** Yes, it is. Thank you.

3 **Q.** Mr. Rowden, you have -- we have a lot of exhibits that
4 have been entered into evidence. Can you please show me the
5 document that requires a prospective purchaser of a Samsung
6 phone to view the warranty agreement before they can purchase
7 the phone?

8 **A.** That requires them to?

9 **Q.** Yes.

10 **A.** There's no document that requires them to view that.

11 **Q.** Okay. Isn't it also true that a protective purchaser
12 cannot even buy a Samsung phone on the website from Samsung?

13 **A.** I'm sorry? The question was?

14 **Q.** Isn't it true that the prospective purchaser can't even
15 buy a Samsung phone on Samsung's website?

16 **A.** Not directly, no.

17 **Q.** Well --

18 **A.** They can buy some. It depends on the phone. We --

19 **Q.** S4 Galaxy?

20 **A.** They could buy a Galaxy S4 from Samsung.

21 **Q.** On its website?

22 **A.** Yes.

23 **Q.** It doesn't direct them to a service provider like Verizon
24 or AT&T?

25 **A.** Well, it does that, also.

1 Q. Okay. So you go directly to Samsung's website, and
2 purchase a phone?

3 A. The answer is a little more complicated.

4 Q. Well, educate me.

5 A. Because each Galaxy S4 is associated with a specific
6 carrier, because they have specific software for their network.
7 There are developer versions of Galaxy S4 that may be purchased
8 directly from Samsung, but if you want a phone activated on a
9 Verizon network, you would -- Samsung would direct you to the
10 Verizon website to purchase the phone.

11 Q. Now I'd like you to look at Exhibit 110 that has been
12 entered into evidence.

13 A. Want me to open the cover?

14 Q. Yes, please.

15 A. Okay. I'm there.

16 Q. Isn't it true that Exhibit 110 is not the only Samsung web
17 page with product specs?

18 A. No. There are many Samsung pages with product specs on
19 different devices.

20 Q. Excuse me?

21 A. Are you asking: Is this the only spec page that we have?

22 Q. Is that the only spec page that you can go to on a Samsung
23 website in order to view the Galaxy S4 product specifications?

24 A. This is one of the pages. I can't say for a fact it's the
25 only one. I don't remember.

1 Q. Okay, but to go to the Galaxy S4 product specifications,
2 you don't have to go to Exhibit 110, and then click buttons,
3 and go someplace else. Samsung's website -- a different
4 Samsung website might come up. Correct?

5 THE COURT: I don't understand the question.

6 MR. ROY: Well, Your Honor, with the Court's
7 permission, I'd like to go to Samsung's website.

8 THE COURT: 110, or --

9 MR. ROY: On the Internet.

10 THE COURT: Why?

11 MR. ROY: Why? Because we'll show that if you go to
12 Samsung's web page, there will be nothing about -- there's --
13 there's pages that have nothing do with Arbitration
14 Agreement --

15 THE COURT: Wait, wait. Are you using Wayback?
16 Because we're talking about --

17 MR. ROY: Excuse me?

18 THE COURT: Are you using Wayback? We're talking
19 about May 2013. We're not talking about August 2014. It
20 doesn't matter what it says today. We're talking about when
21 Mr. Norcia purchased his phone. Unless you tell me you've got
22 a Wayback fired up, let's just move on. Let's go ahead now.

23 MR. ROY: Thank you, Your Honor.

24 Q. Mr. Rowden, please turn to Exhibit 102.

25 A. Okay. I'm there.

1 Q. Please identify the Samsung arbitration contract that you
2 believe Mr. Norcia entered into with Samsung.

3 A. Identify the --

4 Q. The Samsung arbitration contract that you believe
5 Mr. Norcia entered into with Samsung.

6 A. When he purchased the device, he got the warranty, and the
7 terms and the conditions with the warranty.

8 Q. I understand, but Samsung is saying that Mr. Norcia
9 entered into a contract to arbitrate any agreements. So I want
10 you to show me that contract, please.

11 A. Well, it's within the warranty that comes with the device.

12 Q. Well, in Exhibit 102, what pages -- is the whole thing the
13 contract?

14 A. The warranty is part of the device.

15 Q. Let me ask the question another way. It's Samsung's
16 position that Mr. Norcia entered into a contract for binding
17 arbitration on anything that comes up with the Samsung
18 Galaxy S4. You've entered Exhibit 102 into evidence. Is
19 Exhibit 102 the entire contract that binds Mr. Norcia to
20 binding arbitration?

21 A. When he purchased the device, he obtained the warranty.
22 Exhibit 102 includes the terms and conditions for that
23 warranty.

24 Q. Okay. What I'd like you to do is go into Exhibit 102, and
25 show me the contract that he agreed to.

1 A. It's on page 70. Warranty Terms and Conditions.

2 Q. So pages 3 through 69 are not part of the contract.

3 Correct?

4 A. They're more informational, and safety information, health
5 information about the device.

6 Q. Okay. What about pages 82 through 100? Are they part of
7 the contract?

8 A. I believe those are the EULA agreements. So they would be
9 part of -- like when he uses the device, he's agreeing to the
10 End User License Agreement.

11 THE COURT: That's E-U-L-A, for the court reporter.

12 THE WITNESS: EULA.

13 THE COURT: It's all right.

14 BY MR. ROY

15 Q. All right. So we've now identified that. So we've
16 identified the warranty agreement that starts at page 70, and
17 ends at approximately page 81. Correct?

18 A. Yes.

19 Q. Okay. Now, is that the entire contract that Mr. Norcia
20 entered into with Samsung?

21 A. Specific to the warranty, yes.

22 Q. No. Is that the contract that Mr. Norcia entered into
23 with Samsung regarding binding arbitration?

24 A. I'm not an attorney to define contract meaning, but
25 this -- his accepting the warranty by purchasing the device

1 binds him to arbitration, based on my understanding.

2 **Q.** Okay. Well, let me ask it a different way. Mr. Rowden,
3 what are the specific terms of Samsung's contract communicated
4 in the book?

5 **A.** What are they?

6 **Q.** What are they?

7 **A.** I mean, they're stated there. Part -- I mean, depends
8 what he's trying to do. If he's trying to make a warranty
9 claim, it tells him about --

10 Well, we can walk through it.

11 So it explains what's covered, and how long it's covered.
12 So the warranty is covered -- one-year warranty on the device;
13 one year on the battery.

14 **Q.** Mr. Rowden, let me reask my question. What are the
15 specific terms of Samsung's contract, binding Mr. Norcia to
16 arbitration?

17 **THE COURT:** I don't understand the question, Mr. Roy.
18 Are you asking him just to read -- what do you want to -- what
19 are you trying to ask? I don't get it. You want him to read
20 Section 76? I mean --

21 **MR. ROY:** I wanted to him to point to specific
22 language that he says binds Mr. Norcia, if he could easily find
23 it.

24 **THE COURT:** The whole issue of what binds Mr. Norcia
25 is my issue; not Mr. Rowden's.

1 Ask the witness what question you want the fact witness to
2 answer. Binding is not his department.

3 **MR. ROY:** Yes, Your Honor.

4 **BY MR. ROY**

5 **Q.** Once Mr. Norcia purchased the phone, what was he supposed
6 to do in order to agree to the contract terms of binding
7 arbitration?

8 **A.** I'm not sure.

9 **THE COURT:** I don't understand the question.
10 Rephrase it, or move on.

11 **MR. ROY:** Okay.

12 **Q.** How was Mr. Norcia supposed to accept the terms provided
13 in arbitration?

14 **A.** When he purchased the phone, the warranty comes with the
15 phone. They're not separable. So he accepted the warranty and
16 the terms and conditions of the warranty when he puts a credit
17 card down to buy the phone.

18 **MR. ROY:** No further questions.

19 **THE COURT:** That's it?

20 **MR. ROY:** No further questions.

21 **THE COURT:** Thank you. I'll give you just a little
22 bit of redirect. And, Mr. Roy, you have a witness, too; don't
23 you?

24 **MR. ROY:** Yes, I do.

25 **THE COURT:** Mr. Norcia?

1 **MR. ROY:** Yes, sir.

2 **THE COURT:** Okay:

3 **MR. PHILLIPS:** A preliminary matter, Your Honor,
4 given the questions. We have submitted to the court the
5 declaration of Jody citizen from Verizon laying the business
6 records foundation for the receipt that Mr. Norcia signed at
7 the Verizon store on May 23rd, 2013.

8 **THE COURT:** Oh. This is Exhibit 113.

9 **MR. PHILLIPS:** It's in your binder. Well, that
10 exhibit, Exhibit 113, is the receipt. And this is the
11 declaration from Jody Citizen. And on this basis, numerous
12 others, including the fact that the receipt is an admission
13 from a party, it's not hearsay, because it has independent
14 legal significance, we would like the Court to admit that into
15 evidence. And then we can ask Mr. Rowden a couple of very
16 short questions about it, given questions from counsel about
17 where, in certain contracts, Mr. Norcia --

18 **THE COURT:** Norcia.

19 **MR. PHILLIPS:** I keep doing that. And my apologies
20 to Mr. Norcia.

21 **MR. ROY:** Your Honor, I object.

22 **THE COURT:** Hold on. Is that his signature on page 3
23 of Exhibit 113?

24 **MR. PHILLIPS:** Yes, it is.

25 **THE COURT:** All right. So just authenticate it

1 through him. Is there actually a dispute about whether this is
2 a receipt?

3 **MR. ROY:** There is not, Your Honor.

4 **THE COURT:** What's the issue?

5 **MR. ROY:** I'm only objecting to the declaration. We
6 stipulate that --

7 **THE COURT:** So this is received. The declaration, I
8 don't care about. The receipt's in. Okay.

9 **MR. PHILLIPS:** Thank you very much.

10 **THE COURT:** You should thank Mr. Roy.

11 **MR. PHILLIPS:** We did raise it with Mr. Roy in our
12 discussion.

13 But Mr. Rowden, a couple of quick questions.

14 **MR. ROY:** Also, Your Honor, Mr. Rowden has no
15 foundation to talk about the receipt. And there were no
16 questions.

17 **THE COURT:** Let him ask his question. You can
18 object. No preëmptive strikes.

19 **REDIRECT EXAMINATION**

20 **BY MR. PHILLIPS**

21 **Q.** Mr. Rowden, focusing on business practices you were asked
22 a few questions about, is there any instructions from Samsung
23 for customers not to read the documentation that's available to
24 them before they decide to purchase?

25 **A.** No. Actually, we encourage them to read it.

1 Q. Is there any instruction to customers to not type in the
2 word "warranty" and run a search, through the User Manual?

3 A. No.

4 Q. Is there any instruction not to look for the WARRANTY?

5 A. No.

6 Q. Is there any instruction not to look for a
7 dispute-resolution clause?

8 A. No.

9 Q. Is there any instruction not to look for an arbitration
10 clause?

11 A. No.

12 Q. We've had a discussion about Exhibit 113. Could you go to
13 that document in your binder, please?

14 A. I'm there.

15 Q. Okay. Based on your familiarity with Verizon's business
16 practices in May of 2013, was it the company's custom and
17 practice to issue a receipt to customers who purchased the
18 phone?

19 A. Yes.

20 Q. And what was Samsung's -- excuse me. And do you have an
21 understanding about the steps that Verizon took to list the
22 items that were purchased by customers in May of 2013?

23 A. Yes.

24 Q. And are you familiar, generally, with the layout of
25 receipts generated by Verizon?

1 A. Generally, yes.

2 MR. PHILLIPS: Your Honor, we offer Exhibit 113, and
3 we have one follow-up question.

4 THE COURT: It's admitted.
5 (Trial Exhibit 113 received in evidence.)

6 BY MR. PHILLIPS

7 Q. Mr. Rowden, could you please go to Exhibit 113; about
8 two-thirds of the way down?

9 A. I'm there.

10 Q. Do you see the heading, "Items"?

11 A. Yes.

12 Q. And what's listed right under that?

13 A. "One-year manufacturer warranty."

14 Q. And what is that document?

15 A. That's the warranty provided by Samsung.

16 MR. PHILLIPS: Thank you, Your Honor.

17 Thank you, Mr. Rowden.

18 THE COURT: Okay. Thank you, Mr. Rowden.

19 MR. ROY: Your Honor, I have follow-up questions.

20 THE COURT: I'm sorry. Go ahead. Very, very short.

21 RECROSS-EXAMINATION

22 BY MR. ROY

23 Q. Mr. Rowden, you were asked on redirect: Does Samsung
24 discourage its purchasers from looking for warranties --
25 correct? -- on the receipt?

1 A. I was asked that question.

2 Q. Okay.

3 A. Oh, I'm sorry. That's -- no, that's not what I was asked,
4 I don't think.

5 Q. Okay. Well, I'd like you to show me on the receipt where
6 Samsung requires a purchaser or tells a purchaser about
7 arbitration agreements.

8 A. It's not -- there's nothing specific about arbitration.
9 It lists the warranty.

10 Q. I'd like you to show me on the receipt where Samsung says
11 that a purchaser is not allowed to be a representative in a
12 class action; be part of a class action.

13 A. I don't see that on the receipt.

14 Q. I'd like you to show me where Samsung requires a purchaser
15 to acknowledge that they are in a binding arbitration before
16 they purchase the phone.

17 A. This is a Verizon receipt, so Samsung doesn't put that on
18 the receipt.

19 Q. Because Samsung's not part of that contract. Correct?

20 MR. ROY: No further questions, Your Honor.

21 THE COURT: Hold on. He's got to answer the
22 question. You can't just walk away.

23 THE WITNESS: Could you rephrase the question,
24 please?

25 MR. ROY: No further questions.

1 **THE COURT:** That question's withdrawn.

2 Thank you, Mr. Rowden. You're excused. You're welcome to
3 stay, now that you're not testifying.

4 **THE WITNESS:** All right thank you Your Honor.

5 **THE COURT:** Mr. Roy, Mr. Phillips, do you have any
6 other witnesses?

7 **MR. PHILLIPS:** We have none. Thank you, Your Honor.

8 **THE WITNESS:** Should I leave that there?

9 **THE COURT:** Why don't you leave that there? Yeah.

10 **THE WITNESS:** Your Honor --

11 **MR. ROY:** Can we have one moment, please?

12 **THE COURT:** Sure.

13 **MR. PHILLIPS:** Your Honor, since he is no longer
14 testifying, may he stay?

15 **THE COURT:** Yeah. You can stay.

16 **THE WITNESS:** Thank you.

17 (Witness excused.)

18 **THE COURT:** Okay. You're all set, Mr. Roy?

19 **MR. ROY:** Yes, Your Honor.

20 **THE COURT:** Call your witness, please.

21 **MR. HURLEY:** Your Honor, actually, at this time, if
22 that's the conclusion of Samsung's case, we'd like to move for
23 the Court to make a finding on -- I apologize.

24 **THE COURT:** You're not going to call -- you're
25 deeming the matter submitted. You're not going to call a

1 witness? Is that what you're saying?

2 **MR. HURLEY:** I'm going to ask the Court to move
3 that --

4 **THE COURT:** Are you asking for a directed verdict?

5 **MR. ROY:** Yes, Your Honor.

6 **MR. HURLEY:** We're asking for a directed verdict.
7 Okay.

8 **THE COURT:** You should call Mr. Norcia.

9 **MR. HURLEY:** All right.

10 **THE CLERK:** Mr. Norcia, if you'll please come forward
11 and take the witness stand. If you'll please stand and raise
12 your right hand.

13 **DANIEL PATRICK NORCIA,**
14 called as a witness for the Plaintiffs, having been duly sworn,
15 testified as follows:

16 **THE WITNESS:** I do.

17 **THE CLERK:** Please be seated.

18 **THE COURT:** Good morning, Mr. Norcia.

19 **THE WITNESS:** Good morning.

20 **THE CLERK:** Please state your full name for the
21 Court, and spell your last name.

22 **THE WITNESS:** Daniel Patrick Norcia. N-o-r-c-i-a.

23 **THE CLERK:** Thank you.

24 **DIRECT EXAMINATION**

25

1 **BY MR. ROY**

2 **Q.** Mr. Norcia, do you own a Samsung Galaxy S4 phone?

3 **A.** I do.

4 **Q.** When did you purchase that phone?

5 **A.** In May 2013.

6 **Q.** And where did you purchase the phone?

7 **A.** The Verizon store on Market Street.

8 **Q.** Mr. Norcia, let's talk about any pre --

9 **THE COURT:** In San Francisco?

10 **THE WITNESS:** Yes, in San Francisco.

11 **BY MR. ROY**

12 **Q.** Mr. Norcia, let's talk about any preinvestigation you did
13 regarding your Samsung phone prior to purchase. In 2013 what,
14 if any, research did you do regarding the Samsung Galaxy S4
15 prior to your purchase?

16 **A.** I did a Google search. I looked on a couple of trusted
17 websites that I visit. One is called "Gizmodo." One is call
18 "Engadget." And then, you know, whatever results Google
19 yielded.

20 **THE COURT:** Can I ask you to just get a little closer
21 to the mic?

22 **THE WITNESS:** Sure. Sorry about that.

23 **BY MR. ROY**

24 **Q.** Was one of those websites a Samsung website?

25 **A.** It was not.

1 Q. Why not?

2 A. In my experience, you don't go to the manufacturer's
3 website to get an unbiased review of a product.

4 Q. Did you visit the Verizon website?

5 A. I did not.

6 Q. Mr. Norcia, let's talk about what happened when you walked
7 into the Verizon store. In May of 2013, when you walked
8 through that store, what happened?

9 A. I was greeted by a representative at the door, who took my
10 name and phone number. And she asked what I was there for. I
11 told her I was there to buy a new phone.

12 Q. And then what happened?

13 A. She directed me to the register, to a cashier who I spoke
14 with about the phone that I wanted to purchase. Due to the
15 fact that it was an upgrade, we then discussed my plan; my data
16 plan, and that sort of thing, as well as what kind of
17 accessories I wanted with the phone. And then I made the
18 purchase.

19 Q. Mr. Norcia, let's talk about who was present when you
20 purchased your Samsung phone. Was it only you, and the greeter
21 that you mentioned, and the cashier?

22 A. At that point, I believe it was just myself and the
23 cashier. The greeter stayed by the door to help other
24 customers.

25 THE COURT: Wait. So you were sent to a cashier; not

1 a service rep. I don't understand what you mean by a
2 "cashier." Typically when you go, there's a greeter; and then
3 there's a person who actually is knowledgeable about the phones
4 and talks about plans. Is that what you mean by "cashier"?

5 **THE WITNESS:** It was the person behind the register.

6 **THE COURT:** Okay. All right. Go ahead.

7 **BY MR. ROY**

8 **Q.** When you walked through the store, did you already know
9 which phone you were going to purchase?

10 **A.** I did.

11 **Q.** Did you tell the greeter that?

12 **A.** I did.

13 **Q.** Did you need any information about the phone prior to
14 purchase?

15 **A.** I did not.

16 **Q.** In May of 2013, prior to purchasing your phone, what did
17 you know about Samsung's Arbitration Agreement?

18 **A.** Nothing.

19 **Q.** In May of 2013 before you bought your phone, what did
20 anyone tell you about Samsung's Arbitration Agreement?

21 **A.** Nothing.

22 **Q.** In May of 2013 prior to purchasing your phone, and while
23 in the Verizon store, were you presented with an Arbitration
24 Agreement?

25 **A.** I was not.

1 Q. In May of 2013 when you were in the Verizon store, did the
2 cashier tell you that there were any conditions regarding your
3 Samsung phone that were in the box?

4 A. No.

5 Q. In May of 2013 when you were in the Samsung store, were
6 you required to sign anything saying that you were agreeing to
7 an Arbitration Agreement?

8 A. I was not.

9 Q. In 2013 prior to paying for your phone, did a Verizon
10 cashier present you with any additional Samsung contract terms
11 regarding your Samsung Galaxy phone?

12 A. No.

13 Q. Was a Samsung employee present when you were speaking with
14 a Verizon cashier?

15 A. Not to my knowledge.

16 Q. Mr. Norcia, I'd like to hand you Exhibit 1 for
17 identification. It's in the binder. Have you seen Exhibit 1
18 before?

19 A. I have. Yes.

20 Q. And is that your signature?

21 A. Yes.

22 Q. Mr. Norcia, I'd like you to examine the Verizon receipt,
23 and show the Court where it gives you notice that additional
24 contract terms can be found in the Samsung box.

25 THE COURT: Well, before we do that, Mr. Roy, what is

1 this receipt for?

2 **THE WITNESS:** This is for the purchase of my Samsung
3 Galaxy S4.

4 **THE COURT:** Well, would you turn to -- there's a
5 Tab 113 in that same binder.

6 **THE WITNESS:** Yep.

7 **THE COURT:** Okay. So -- oh, okay. So when you
8 bought your phone in May of 2013, you got Exhibit 1 and
9 Exhibit 1113. Is that --

10 **THE WITNESS:** I'm sorry.

11 **THE COURT:** When you bought your phone in May of
12 2013 --

13 **THE WITNESS:** Yes.

14 **THE COURT:** -- you got Exhibit 1, and you got
15 Exhibit 113. Right?

16 **THE WITNESS:** I may have gotten Exhibit 113. Yes.

17 **THE COURT:** All right. Okay. Let's just start with
18 Exhibit 1. So this is what you say is your receipt for the
19 purchase of the phone. Is that right?

20 **THE WITNESS:** Yes, it is.

21 **THE COURT:** Okay. Go ahead, Mr. Roy.

22 **BY MR. ROY**

23 **Q.** Mr. Norcia, who did you buy the phone from?

24 **A.** Verizon.

25 **Q.** And who charged your credit card?

1 A. Verizon.

2 Q. And on the receipt, does it say who the phone was sold by?

3 A. It does.

4 Q. Does it say that under your signature?

5 A. It does. It says "Handset, equipment, and accessories
6 sold by Verizon Wireless" -- excuse me -- "sold by Verizon
7 Wireless Network Procurement."

8 Q. Mr. Norcia, in May of 2013 when you paid Verizon for your
9 Samsung phone, did you believe you were entering into a
10 contract with Verizon or Samsung?

11 A. Verizon.

12 Q. Why did you believe you were entering into a contract with
13 Verizon?

14 A. Because I purchased my phone from Verizon.

15 Q. Now, before you paid for the phone, did anyone at Verizon
16 tell you that by buying the phone, you were automatically
17 agreeing to enter into an Arbitration Agreement with Samsung?

18 A. No.

19 Q. Mr. Norcia, let's talk about what happened after you paid
20 for your Samsung phone. After you paid the cashier for your
21 phone, did you then enter into a Service Agreement?

22 A. I'm sorry? Did I -- yes. We discussed the -- the -- the
23 plan for my phone. Excuse me. The unlimited data was no
24 longer an option, so we had to discuss, kind of, the terms of
25 the agreement -- of the renewal of my Verizon contract.

1 Q. Okay. Now I'd like you to turn to Exhibit 113 for
2 identification. Now, have you seen this agreement before?

3 A. I've seen the digital version of it.

4 Q. What do you mean? On the digital version, did you see
5 this entire agreement?

6 A. I received an e-mail from Verizon with a number of
7 attachments. And I did not open the attachments, but this was
8 one of them.

9 Q. Okay. In 2013 did you see a hard copy of Exhibit 113?

10 A. I may have. I don't recall.

11 Q. And what does --

12 In Exhibit 113 you entered into a Service Agreement with
13 Verizon. Correct?

14 A. That is correct.

15 Q. Okay. Now, I see below that you entered into another
16 agreement. Correct? You paid for insurance?

17 A. I did. Yes.

18 Q. And who did you enter into that agreement with?

19 A. That is through Verizon. I believe they use a company
20 called "Asurion."

21 Q. And did you pay a monthly charge for that?

22 A. I do.

23 Q. And why did you enter into that agreement with that
24 company?

25 A. Because I wanted to make sure that if my phone was broken

1 or damaged, I could replace it through Verizon.

2 **Q.** Okay. I'd like you to look on Exhibit 113, and show the
3 Court where it says that you entered into any type of agreement
4 with Samsung.

5 **A.** As far as I can tell, it does not.

6 **Q.** Now, you do see an agreement there. Correct?

7 **A.** I do. Yes.

8 **Q.** And that's -- it's an agreement that you agreed to
9 arbitration and other things. Correct?

10 **A.** Ah.

11 **Q.** At the -- above your signature?

12 **THE COURT:** Are you talking about page 3.

13 **THE WITNESS:** Yes. Page 3.

14 **THE COURT:** No. Page 2.

15 **MR. ROY:** Page 003.

16 **THE COURT:** Are you asking if that's his signature?

17 **MR. ROY:** Yes.

18 **Q.** Is that your signature?

19 **A.** Yes, it is.

20 **THE COURT:** Oh, I see. Go ahead.

21 **BY MR. ROY**

22 **Q.** And the Arbitration Agreement you entered into was with
23 the insurance company that you bought -- that you purchased
24 your insurance plan through. Isn't that correct?

25 **MR. PHILLIPS:** Objection. Speculation.

1 **THE COURT:** Sustained. You need to rephrase that.
2 Also calls for a legal conclusion. You can ask him what the
3 standing was, but you can't ask him that other question.

4 **BY MR. ROY**

5 **Q.** Mr. Norcia, when you entered into your Service Agreement,
6 was it you your understanding that you were entering into an
7 agreement with Verizon?

8 **A.** Yes.

9 **Q.** Was it also your understanding that you were entering into
10 an agreement with Asurion?

11 **A.** Through Verizon, yes.

12 **Q.** Okay. Was it also your understanding that there was no
13 other party to that contract?

14 **A.** That was my understanding.

15 **Q.** Mr. Norcia, after you paid for the Service Agreement, did
16 the cashier then direct you to get your phone?

17 **A.** There was a representative who went into the back to get
18 the phone. When she came out, we set it up.

19 **Q.** Okay. Was the representative who went to the back to get
20 the phone the same person as the cashier?

21 **A.** It was not.

22 **Q.** And then what happened when the phone was brought out to
23 you?

24 **A.** When the phone was brought out, we went over to one of the
25 empty tables of the store. She unpacked the phone, took the

1 battery out, put it into the phone, turned the phone on, handed
2 me the phone to input my GNL information to transfer my
3 contacts. And then I handed the phone back to her. She put
4 the protective cover on it and the case.

5 **Q.** Did she tell you that -- to -- did you walk out the store,
6 then?

7 **A.** I picked up the phone charger, the headphones, and the
8 earbuds that came with it, and then I left.

9 **Q.** Did she offer to give you the box?

10 **A.** She did. I declined.

11 **Q.** Okay. Did she tell you before you declined that there was
12 an Arbitration Agreement; that you were bound to assent to an
13 Arbitration Agreement?

14 **A.** No.

15 **Q.** Did she tell you that in the box, there was a contract
16 that you had agreed to, to not participate in a class action?

17 **A.** No.

18 **Q.** Did she tell you that in the box, there were any terms
19 that you were bound by with Samsung?

20 **A.** No.

21 **Q.** So what did you do then?

22 **A.** I left the store.

23 **MR. ROY:** No further questions, Your Honor.

24 **THE COURT:** Cross?

25

CROSS-EXAMINATION

BY MR. PHILLIPS

Q. Good morning, Mr. Norcia.

A. Good morning.

Q. I gather, based on your testimony, that you're a rather sophisticated user of consumer electronic products. Would you agree with that?

A. Yes.

Q. And you're pretty thoughtful and thorough of a person when it comes to deciding what product to purchase?

A. Generally.

Q. And you do your homework?

A. Yes, generally.

Q. And before you came into the store, you owned a Motorola phone already on Verizon's network?

A. That is correct.

Q. And you -- your -- the Motorola phone that you owned came with a warranty. Right?

A. Through Verizon, I believe. Yes.

Q. Okay. And you're aware that consumer products come with warranties provided by the manufacturer of the product.

Correct?

A. I had never purchased a Samsung phone, so I didn't know what their deal was.

Q. Okay. When you buy consumer products, you're aware that

1 they come with paperwork, often; don't they?

2 A. Often, yes.

3 Q. And that includes user manuals and user guides like the
4 type we've discussed?

5 A. That is correct.

6 Q. And like the type that were pulled out of the box when you
7 walked into the Verizon store?

8 A. I do not recall seeing paperwork coming out of the box.

9 Q. Okay. You expect there to be a warranty from
10 manufacturers when you buy an important piece of
11 consumer-electronics products; don't you?

12 A. It depends.

13 Q. And you know that the Samsung Galaxy S4 came with a
14 warranty. Correct?

15 A. I paid for insurance through Verizon. I would assume that
16 covered the warranty.

17 Q. Mr. Norcia, you knew that Samsung provided a warranty with
18 your phone when you bought it. Correct?

19 A. I knew Verizon did.

20 Q. You knew there was a warranty attached to your phone.
21 Correct?

22 A. Through Verizon. Yes.

23 Q. Have you ever made a warranty claim?

24 A. I have not.

25 Q. There was a few questions asked of you about

1 dispute-resolution clauses. Do you remember that from your
2 counsel?

3 A. Yes.

4 Q. And you bought the Galaxy S4 to use over Verizon's
5 network. Correct?

6 A. That is correct.

7 Q. And you reviewed and signed the agreements that Verizon
8 provided to you indicating that you entered into a contract
9 with Verizon. Correct?

10 A. When I signed it, I did not actually see the full
11 agreements. It was a digital signature pad.

12 Q. Okay. And you've provided the exhibits to the Court at
13 Tabs 2 and 3. Is that right?

14 A. Two and three? Is that Number 1 and --

15 Q. Yes. We have a master set there. Could you go to
16 Exhibits 2 and 3?

17 A. Sure. On Exhibit 2, sir, could you go to the page that
18 has the number at the bottom: DN0007? It's in the bottom,
19 middle of the page.

20 A. Sure.

21 Q. Are you there?

22 A. Yes.

23 Q. Do you see that all of the text in box there?

24 A. I do.

25 Q. And it indicates that there's a section regarding: How do

1 you resolve disputes with Verizon Wireless?

2 **A.** It does.

3 **Q.** And in the second paragraph it indicates that you and
4 Verizon Wireless both agree to resolve disputes by arbitration
5 or in small-claims court, and that there's no judge or jury.
6 Right?

7 **A.** Where does it say that?

8 **Q.** In the second bolded paragraph.

9 **A.** It does say that. Yes.

10 **Q.** Okay. And you've entered into a contract with Verizon.
11 Correct?

12 **A.** My contract with Verizon was started about 14 years ago,
13 through my parents. It transferred to me.

14 **Q.** Mr. Norcia, you entered into a contract with Verizon.
15 Correct?

16 **A.** Yes.

17 **Q.** Could you turn to Exhibit 3 in your binder, please?

18 **A.** Sure.

19 **Q.** Could you go to page 00017?

20 **A.** Yes.

21 **Q.** In the middle of that page, in a box with bolded text, it
22 says, "How do I resolve disputes with Verizon which are less?"
23 Correct?

24 **A.** It does.

25 **Q.** And when you went into the store in May of 2013, you

1 entered into a new agreement with Verizon?

2 **A.** I renewed my contract. Yes.

3 **Q.** And that's one of the ways you got a discount on the
4 phone?

5 **A.** Correct.

6 **Q.** And in the agreement which you provided, because it's in
7 our binder here for the Court -- above that language, there's a
8 section that says, "Disclaimer of warranties." Do you see
9 that?

10 **A.** I do.

11 **Q.** And you knew that Verizon, itself, was not providing a
12 warranty for the phone?

13 **MR. ROY:** Objection, Your Honor. Foundation. This
14 contract was 2014, after the purchase of the phone.

15 **THE COURT:** Is that right, Mr. Phillips?

16 **MR. ROY:** That's updated 3/24/14 on the last page at
17 the very bottom.

18 **THE COURT:** It's on the cover page 7/7/14, 3:00 p.m.
19 Is this not the agreement in effect in 2013?

20 **MR. PHILLIPS:** I believe this is the print date of
21 the document.

22 **THE COURT:** I know you believe that, but you need to
23 give me some evidence that this was the agreement -- other than
24 your opinion -- in May of 2013.

25 **MR. PHILLIPS:** Okay.

1 **THE COURT:** Do you have the foundation for that?

2 **BY MR. PHILLIPS**

3 **Q.** Mr. Norcia, you understood in May of 2013 that Verizon was
4 not providing -- Verizon, itself, as the wireless carrier, was
5 not providing a warranty for the actual phone, itself.

6 Correct?

7 **A.** I did not know that.

8 **Q.** Mr. Norcia, you work for a company called "Bigpoint." Is
9 that right?

10 **A.** That is correct.

11 **Q.** And what's your job title at Bigpoint?

12 **A.** Director of Marketing and Business Development, The
13 Americas.

14 **Q.** And because of your work, you are familiar with the
15 business records that Bigpoint creates. Isn't that right?

16 **A.** You need to be more specific, in terms of --

17 **Q.** Are you familiar with the terms of service that Bigpoint
18 generates to offer its customers when they play the game?

19 **A.** Not intimately, but I'm aware of them, yes.

20 **Q.** Okay. But you're a -- you're a managing director of the
21 business. Correct?

22 **A.** I'm not a managing director. No.

23 **Q.** What's your title, again?

24 **A.** Director of Marketing and Business Development.

25 **Q.** Okay. And is part of that marketing reaching out to

1 customers to have them sign up for your business and enter it?

2 Yes?

3 **A.** It is.

4 **Q.** And to enter into an agreement with Bigpoint. Correct?

5 **A.** Correct.

6 **Q.** Now, Bigpoint has a terms of service; doesn't it?

7 **A.** It does.

8 **Q.** And when a customer comes onto that website, it -- those
9 customers are requested to click and accept the terms of
10 service. Correct?

11 **MR. ROY:** Objection, Your Honor. Relevance. What
12 Bigpoint does --

13 **THE COURT:** Overruled.

14 Go ahead.

15 **THE WITNESS:** Yes.

16 **BY MR. PHILLIPS**

17 **Q.** And --

18 **THE COURT:** By the way, no speaking objections. You
19 make your legal objection, but that's it.

20 **MR. ROY:** Yes, Your Honor.

21 **THE COURT:** That's in my Pretrial Order, and I expect
22 everyone to adhere to that.

23 **MR. ROY:** Yes, Your Honor.

24 **THE COURT:** And stand when you make an objection.

25 Go ahead.

1 **BY MR. PHILLIPS**

2 **Q.** And by creating an account on the site, or playing any of
3 the games, the customer agrees to the terms of service created
4 by Bigpoint?

5 **A.** That is correct.

6 **Q.** And you ask the customers to read this document carefully
7 before they sign on?

8 **A.** That is correct.

9 **Q.** And since you've filed your lawsuit, have you looked at
10 the Verizon or the Samsung warranty that came with your phone?

11 **A.** I have not.

12 **Q.** Okay. Do you know one way or another whether Samsung's
13 warranty has the same language: "Please read this document
14 carefully, and keep it"?

15 **A.** I do not.

16 **Q.** One of the terms that is incorporated into the terms of
17 service is a warranty that Bigpoint provides. Correct?

18 **A.** Is that a question?

19 **Q.** Yes.

20 **THE COURT:** Mr. Norcia, it's a question. You need to
21 answer it.

22 **THE WITNESS:** Yes.

23 **BY MR. PHILLIPS**

24 **Q.** And that warranty --

25 **MR. PHILLIPS:** Your Honor, I have a copy for the

1 Court.

2 (Whereupon a document was tendered to the Court.)

3 **MR. PHILLIPS:** Oh, actually, you can go to 116 in
4 your binder. I'm sorry. Is it in there?

5 **THE WITNESS:** It is not. No.

6 **MR. PHILLIPS:** Okay. My apologies. Thank you, sir.

7 **BY MR. PHILLIPS**

8 **Q.** And in the Bigpoint terms of service, there's a heading
9 for warranty. Right?

10 **THE COURT:** What page is that?

11 **MR. PHILLIPS:** On Section 14, which is one, two,
12 three, four, five, six -- seven pages in.

13 **THE WITNESS:** Yes. I see that section.

14 **BY MR. PHILLIPS**

15 **Q.** And there's no table of contents that directs your
16 customers to that on this document. Right?

17 **A.** Correct.

18 **Q.** And in the warranty, the -- excuse me -- the customers
19 specifically agree to the warranty as a term by simply agreeing
20 to play the games that Bigpoint puts out in the marketplace.
21 Right?

22 **A.** That is correct.

23 **Q.** In fact, all a customer has to do, once they've accepted
24 the terms of service, is come back onto their account and play
25 a game, and they have agreed to the terms of service. Right?

1 A. I believe the terms of service need to be agreed to before
2 playing, but yes.

3 Q. Could you go to the very first paragraph there on
4 Exhibit 116?

5 A. Sure.

6 Q. And the second sentence says, "Please read them," which is
7 the terms of service, "carefully before creating an account or
8 playing any games." See that?

9 A. I do.

10 Q. And under the heading "Agreement of Terms," could you go
11 to that section, please?

12 A. Sure.

13 Q. Do you see the fifth line down?

14 A. Yes.

15 Q. There's a sentence, and I'll read it. "Each time you use
16 the site or play any of the games, you reaffirm your acceptance
17 of the then-current terms of service." Did I read that right?

18 A. You did.

19 Q. So all a customer has to do is play a game; and whatever
20 version of the terms of service are current at that time --
21 they've accepted them.

22 A. When we --

23 Q. That's what it says?

24 A. That is correct.

25 Q. Okay. And this terms of service also has a class-action

1 waiver; doesn't it?

2 **A.** I'm not familiar with it.

3 **Q.** Go to Section 18, please, sir, of Exhibit 116.

4 **A.** Okay.

5 **Q.** In the second paragraph -- do you see that?

6 **A.** I do.

7 **Q.** It says, "Except where prohibited, you agree" --

8 **MR. ROY:** Objection, Your Honor.

9 **THE COURT:** Let him get it out. Then you can make
10 the objection.

11 Go ahead.

12 **BY MR. PHILLIPS**

13 **Q.** -- "you agree that any and all disputes, claims, and
14 causes of action arising out of or connected with your play of
15 any game or participation in any tournament shall be resolved
16 individually, without resort to any form of class action and
17 exclusively by the appropriate court located in the state of
18 California." Did I read that right?

19 **A.** You did.

20 **Q.** And this was the terms and conditions that you, as a
21 director of Bigpoint, as you told us earlier, were aware of at
22 the time that you walked into the Verizon store in 2013. You
23 knew about your business records. Right?

24 **A.** Not this clause specifically, but yes.

25 **Q.** And is there any table of contents that directs the game

1 user to the class-action waiver?

2 **A.** Not that I'm aware of.

3 **Q.** Is there a table of contents that directs the game user to
4 the venue provision that provides that disputes should be
5 resolved in State Court?

6 **A.** Not that I'm aware of.

7 **Q.** Is there any statement on this document that suggests that
8 users call up Bigpoint to ask them about dispute-resolution
9 clauses or to ask them about venue provisions?

10 **A.** Not that I'm aware of.

11 **THE COURT:** Mr. Roy, you may sit down.

12 **BY MR. PHILLIPS**

13 **Q.** Let me ask you a few questions about your purchase,
14 Mr. Norcia. You purchased your Galaxy S4 phone. Did you bring
15 it today?

16 **A.** I have a replacement. That screen cracked. But I still
17 have an S4.

18 **THE COURT:** How did you get the replacement phone?

19 **THE WITNESS:** Through Verizon.

20 **THE COURT:** Did you get it from the insurance
21 coverage?

22 **THE WITNESS:** I went to Verizon. I told them I had a
23 cracked screen. They got in contact with Asurion. They sent
24 me a new phone in a box. I put my broken one in the box and
25 sent it back to Asurion.

1 **THE COURT:** When did -- when did this happen?

2 **THE WITNESS:** I don't recall the exact date.

3 **THE COURT:** Was it within a year of May of 2013?

4 **THE WITNESS:** It was. Yes.

5 **THE COURT:** And when you went to Verizon, what did --

6 You presented your phone and said, "This cracked, and I
7 want a replacement?"

8 **THE WITNESS:** Right.

9 **THE COURT:** Did they mention the Samsung warranty at
10 that point?

11 **THE WITNESS:** They did not.

12 **THE COURT:** What did they tell you?

13 **THE WITNESS:** They told me it was going to go through
14 Asurion. They called the insurance company right there, from
15 the store, and got a replacement sent to my house the next day.

16 **THE COURT:** Have you ever gotten a phone replacement
17 before?

18 **THE WITNESS:** I have.

19 **THE COURT:** Okay. Was it through Verizon?

20 **THE WITNESS:** It was.

21 **THE COURT:** All right. Have you ever gotten -- have
22 you ever had any communications directly with the phone
23 manufacturer -- not with the company; with the phone
24 manufacturer -- about warranties?

25 **THE WITNESS:** I have not.

1 **THE COURT:** Have you ever made a warranty claim to a
2 phone manufacturer?

3 **THE WITNESS:** I have not.

4 **THE COURT:** Okay. Do you buy Asurion coverage for
5 all of your phones?

6 **THE WITNESS:** I do. Yes.

7 **THE COURT:** All right. Go ahead, Mr. Phillips.

8 **MR. PHILLIPS:** Thank you, Your Honor. We'd like to
9 offer Exhibit 113 into evidence. I'm sorry. 116 into
10 evidence, Your Honor.

11 **THE COURT:** Admitted.
12 (Trial Exhibit 116 received in evidence.)

13 **BY MR. PHILLIPS**

14 **Q.** Mr. Norcia, a few questions about your purchase. I
15 mispronounced your name. I apologize.

16 **A.** It's okay.

17 **Q.** You purchased your Galaxy S4 the day it was released
18 through Verizon's network?

19 **A.** That is correct.

20 **Q.** May 23rd, 2013?

21 **A.** That is correct.

22 **Q.** That's the date on your invoice. And you had your choice
23 of phones?

24 **A.** I did.

25 **Q.** You were free to do all of the research you wanted? In

1 fact, you mentioned a couple of external, third-party websites?

2 A. I did.

3 Q. You were free at the time to review all of the user
4 product information that's available?

5 A. Yes.

6 Q. You were free at the time to review a User Guide if you
7 wanted to?

8 A. If I wanted to, yes.

9 Q. You're familiar with searchable pdf documents. Correct?

10 A. No.

11 Q. Have you ever pulled up a document on the Internet, and
12 typed a word into a search bar, and asked it to search?

13 A. Yes.

14 Q. And so you're familiar with how those types of documents
15 work?

16 A. Yes.

17 Q. Do you also know that at times, when you pull up a
18 document, there's a -- a hyperlink that will take you to a
19 particular section?

20 A. Yes.

21 Q. Okay. And you were free, before you purchased a Samsung
22 phone, to research its warranty and understand its terms and
23 conditions if you wanted to?

24 A. Yes, I was free to.

25 Q. And was this your first time at a Verizon store?

1 A. No.

2 Q. Did you demo the phone before at any other store?

3 A. No.

4 Q. You talked briefly with counsel about what you reviewed
5 before you made your purchase. And I just want to make it
6 clear for the Court: You bought your Samsung GS4 after viewing
7 the product specifications on Samsung's website.

8 A. I did not.

9 Q. You've seen your Complaint in this case; haven't you, sir?

10 A. I have seen a version of it. Yes.

11 (Whereupon a document was tendered to the Court.)

12 MR. PHILLIPS: May I approach the witness,

13 Your Honor?

14 THE COURT: Of course.

15 Thank you.

16 THE CLERK: You're welcome.

17 BY MR. PHILLIPS

18 Q. Mr. Norcia, take a look at the cover page there. Is that
19 your name above the "B"?

20 A. It is.

21 Q. Would you turn to page seven, paragraph 32?

22 A. Yes.

23 Q. (Reading) "After the Galaxy S4 was announced and in
24 advance of purchasing, Mr. Norcia" --

25 And that's you. Correct?

1 A. Yes.

2 Q. -- "read numerous online reviews of the Galaxy S4,
3 including reviews that discussed the Galaxy S4's speed and
4 performance on benchmark tests." Did I read that right?

5 A. You did.

6 Q. And the second sentence says, "In addition, Mr. Norcia
7 viewed the product specifications on Samsung's website and
8 packaging, stating that the Galaxy S4 had 16 gigabytes of
9 memory capacity." Did I read that right?

10 A. You did read that correctly.

11 THE CLERK: Counsel, what exhibit is this?

12 MR. PHILLIPS: It is not an exhibit. It is the
13 Complaint in the action that's at Docket Item 1. It was filed
14 on February 7th, 2014. I was reading from paragraph 32, which
15 is page 7 of 12, on the ECF header.

16 THE COURT: So where did you read this? Online?

17 THE WITNESS: I'm sorry?

18 THE COURT: Where did you read the product specs to
19 get them? Online?

20 THE WITNESS: Online. Yes.

21 THE COURT: Did you get them from the Samsung
22 website?

23 THE WITNESS: Like I said, I did the Google search.
24 I looked on Gizmodo and Engadget.

25 THE COURT: Well, it says here that you read the

1 product specs on Samsung's website.

2 **THE WITNESS:** It does say that here.

3 **THE COURT:** Is that a mistake?

4 **THE WITNESS:** That is a mistake. Yes.

5 **THE COURT:** Okay. So all right. Go ahead,
6 Mr. Phillips.

7 **MR. PHILLIPS:** Your Honor, under the *Gradetech* case,
8 which is a 2006 Westlaw 1806156 opinion written by Judge Alsup,
9 that is an admission of Mr. Norcia.

10 **BY MR. PHILLIPS**

11 **Q.** Let me -- could you go to Exhibit 110 that's in evidence?

12 **THE COURT:** Let me make sure I understand something.
13 So you never went -- prior to your purchase of the S4 phone,
14 you never looked at any Samsung website.

15 **THE WITNESS:** That is correct.

16 **THE COURT:** Okay. All right.

17 **BY MR. PHILLIPS**

18 **Q.** Are you there, Mr. Norcia?

19 **A.** I am. Yes.

20 **Q.** This is in evidence. And it's a page regarding this
21 Samsung S4. Do you agree with me?

22 **A.** Yep.

23 **Q.** And if you go on page 2, you'll see links to the Owner's
24 Manual, and to the warranty.

25 **A.** I do see those.

1 Q. And -- and let's assume that your Complaint is correct,
2 and you did visit Samsung's website. You would know how to
3 link through to these documents. Right?

4 A. Click the link.

5 Q. And you knew that Samsung was the manufacturer of the
6 phone? No dispute about that?

7 A. I did. Yes.

8 Q. And you had every opportunity to review any document on
9 Samsung's website before you decided to purchase the Galaxy S4?

10 A. I had the opportunity. Yes.

11 Q. Let's turn now to the materials that were available in the
12 store when you walked in to make your purchase. You've told
13 the Court -- and you wrote a declaration in this case -- that
14 the phone came packaged in a box.

15 A. Yes. It came out of the back in a box.

16 Q. And in your Complaint, again, you specifically claim that
17 the packaging stated that the Galaxy S4 had 16 gigabytes memory
18 capacity?

19 A. I did.

20 Q. Paragraph 32. Correct?

21 A. Ah, that is what that says. Yes.

22 **THE COURT:** Well, is that wrong, in your view? Take
23 a look at it on page 7. So the question isn't what it
24 literally says. I'm trying to figure out what you actually
25 thought was the case.

1 **THE WITNESS:** I knew it had 16 gigabytes of memory,
2 because I spoke with the sales representative about it.

3 **THE COURT:** Okay, but it says here -- here the
4 packaging on the box said it had 16 gigabytes. Do you recall
5 seeing that?

6 **THE WITNESS:** I do not recall seeing that. No.

7 **THE COURT:** All right. Mr. Phillips.

8 **BY MR. PHILLIPS**

9 **Q.** And do you have Exhibit 101? It's in your binder, sir.

10 **THE COURT:** So I'm sorry. Let me just go back to
11 that. So the sentence in page 7, paragraph 32, is "Mr. Norcia
12 viewed the product specifications on Samsung's website and
13 packaging stating that the Galaxy S4 had 16 gigabytes of memory
14 capacity."

15 Now what I hear you saying -- tell me if it's right or
16 not -- my understanding is right -- you're saying that you did
17 not actually see packaging stating that the Galaxy S4 had 16
18 gigabytes?

19 **THE WITNESS:** I saw the box, but I did not see that
20 on it specifically.

21 **THE COURT:** Okay. So the statement here that you
22 viewed packaging stating that the S4 had 16 gigabytes is not
23 correct?

24 **THE WITNESS:** That is correct.

25 **THE COURT:** Okay.

1 **MR. PHILLIPS:** And, Your Honor, we have case
2 authority confirming that these are admissions from Mr. Norcia.

3 **Q.** Did you turn Exhibit 101, sir?

4 **A.** Yes.

5 **Q.** And there's a single-page document, if you go to the end
6 of that exhibit. Do you see that, sir?

7 **A.** Ah, I do.

8 **Q.** And -- and this is in evidence. And it's information
9 that's on the product packaging. And it indicates right there
10 at the top that there's -- this is a 16-gigabyte phone?

11 **A.** It does.

12 **Q.** And spelled the exact same way you included it in your
13 Complaint?

14 **A.** That is correct.

15 **Q.** And under Package Contents," it notes that it comes with
16 the Product Safety and Warranty Brochure. Right?

17 **A.** It does. Yes.

18 **Q.** And when you were answering Mr. Roy's questions, you
19 indicated that the Verizon representative offered all of the
20 contents to you, but that you declined?

21 **A.** That's correct.

22 **Q.** And that was your decision?

23 **A.** Yes.

24 **Q.** And you could just as easily have asked for the box?

25 **A.** I could have. Yes.

1 Q. And you could have looked at the box?

2 A. Yes.

3 Q. And you could have asked for all of the contents of the
4 box?

5 A. Yes.

6 Q. And you could have read all of those. Correct?

7 A. Correct.

8 THE COURT: Why did you -- why would you walk out?
9 I'm just interested. Why would you walk out without the User
10 Manual in the box?

11 THE WITNESS: Because this is an Android phone. I
12 know how to use the Android.

13 THE COURT: You felt comfortable enough with the
14 technology, you didn't want to have any instructions?

15 THE WITNESS: I was on my way to work.

16 THE COURT: What about --

17 And you weren't interested in the warranty? You've had
18 phone problems before.

19 THE WITNESS: I have had phone problems before, but I
20 purchased the insurance plan through Verizon, so that would
21 cover it if anything happened to the phone.

22 THE COURT: All right.

23 BY MR. PHILLIPS

24 Q. What's the terms of warranty -- or excuse me -- the
25 insurance that you buy?

1 A. I believe it's 7.99 a month. That protects it from
2 damage. They replace the phone, I think, for \$99 instead of
3 full price.

4 Q. Okay. For how long? As long as you keep the terms alive?

5 A. I think as long as you continue making the monthly
6 payment. Yeah.

7 Q. Okay. So you understand that buying the insurance gives
8 you protection beyond what you would get from the
9 manufacturer's warranty. That's why you buy it?

10 A. I understand it gives me protection. Yes.

11 Q. Beyond what's provided in the warranty?

12 A. Yeah. Yes.

13 Q. Okay. Let's go back to the packaging there.

14 You obviously have seen the packaging, because you told us
15 that the Verizon rep returned to the storeroom with a box, and
16 placed the box on the table?

17 A. That is correct.

18 Q. Do you have Exhibit 107 [sic] in front of you, sir?

19 I'm sorry. 102. Would you go to that in the binder?

20 A. Sure.

21 Q. Now, this is a copy of it; but you understand that booklet
22 came in the box that you bought on May 23rd, 2013?

23 A. I did not see any.

24 Q. You didn't see any booklets that were pulled out of the
25 box?

1 A. I don't recall seeing them. No.

2 Q. Could you go to page 2 of this document, which is .007?

3 A. Certainly.

4 Q. Okay. And read the two bolded headings for me.

5 A. "Section One: Health & Safety Information."

6 "Section Two: Warranty information."

7 Q. Now, if you were curious about the warranty information,
8 where would you go?

9 A. I would assume you'd look on page 70.

10 Q. Okay. Could you go there for us?

11 A. Okay.

12 Q. All right. And what's the title there in Section Two?

13 A. "Section Two. Warranty Information."

14 Q. Okay. And read them to yourself, but just read the bolded
15 headings -- for example, "What is not covered" -- and then stop
16 when you get to the heading on page 76 that says, "What is the
17 procedure for resolving disputes?"

18 A. Okay.

19 Q. Okay. How long did it take us to get there, from when you
20 first looked at that document; to get to the dispute-resolution
21 clause?

22 A. Eight to ten seconds, probably.

23 Q. And do you see the full-cap text under the heading?

24 A. I do.

25 Q. And read that to yourself, and tell us what you understand

1 it to mean.

2 **THE WITNESS:** It says that --

3 **MR. ROY:** Objection, Your Honor.

4 **THE COURT:** It is just his understanding.

5 That's fine. Go ahead.

6 **THE WITNESS:** It says any of -- any dispute arising
7 over Samsung shall be resolved through arbitration; not through
8 court or trial.

9 **BY MR. PHILLIPS**

10 **Q.** And this language is very similar to the class-action
11 waiver that appears in your company's terms of service that it
12 has all of its customers accept. Right?

13 **A.** It is similar. Yes.

14 **Q.** Yeah, but one difference is that there's no heading in
15 your terms of service that directs the customer to the
16 warranty; and in this document there is. Right?

17 **A.** That is correct.

18 **Q.** Could you read the first sentence under the -- the
19 full-capped text?

20 **A.** "All disputes with Samsung arising in any way from this
21 limited warranty" --

22 **Q.** No. I'm sorry, sir. Maybe it was a bad question, but
23 you've read that to yourself, and you told us what you think it
24 means.

25 Could you read the next sentence after that full-capped

1 text on page 77?

2 A. I'm sorry about that.

3 Q. And continue. Tell us what you think it means.

4 A. "Any such dispute shall not be combined or consolidated
5 with a dispute involving any other persons or entities, product
6 or claim; and specifically, without limitation of the
7 foregoing, shall not, under any circumstances, proceed as part
8 of a class action.

9 Q. What do you understand that to mean, sir?

10 A. It means that disputes have to go through arbitration, not
11 a class action, I would assume.

12 Q. Could you go to Exhibit 113, please? Are you there?

13 A. Yes.

14 Q. And this is in evidence. And this is your customer
15 agreement that you signed the day you went into the store?

16 A. As I said, I did not actually sign this agreement. I
17 signed a digital signature pad. Not all of this information
18 was displayed on it. It's a very small display.

19 Q. Is that your signature on this document, sir?

20 A. It is.

21 Q. And have you signed receipts using a digital display pad
22 many, many times?

23 A. I have.

24 Q. Like all of us?

25 A. Yes.

1 Q. Yeah. And if you wanted to, you could have reviewed all
2 of the terms that you signed?

3 Your signature's important to you. Right?

4 A. It is.

5 THE COURT: You had two questions there, so.

6 MR. PHILLIPS: Thank you. I appreciate that.

7 THE COURT: So signature is important; and then --

8 MR. PHILLIPS: Yes.

9 BY MR. PHILLIPS

10 Q. So you would have had -- if you wanted to, you could have
11 taken the opportunity at the store to read all of the language
12 on your receipt?

13 A. I would assume so. Yes.

14 Q. But you were in a hurry that day, because you were heading
15 to work?

16 A. Correct.

17 Q. And you wanted to leave everything behind, and walk out
18 with your phone and charger and the peripherals, and get to it?

19 A. Correct.

20 THE COURT: Did you activate your phone at that
21 moment of purchase, and use it as your phone the second you
22 walked out?

23 THE WITNESS: Yes. My old one was pretty much broken
24 at that point, so --

25

1 **BY MR. PHILLIPS**

2 **Q.** Okay. And you bought -- as you've told us, you bought
3 your phone in May of 2013?

4 **A.** That is correct.

5 **Q.** You didn't buy it in April?

6 **A.** I did not buy it in April.

7 (Whereupon a document was tendered to the Court.)

8 **BY MR. PHILLIPS**

9 **Q.** I'm handing you your declaration in opposition to
10 defendants' motion to compel arbitration and request for stay,
11 which is Document 20-1 filed on May 5th, 2014. Is that your
12 signature there on page 3 of 3?

13 **A.** It is.

14 **Q.** And could you go to section paragraph 2 on page 2?

15 **A.** Yes.

16 **Q.** "I purchased a Galaxy S4 smartphone at a Verizon retail
17 store in April 2013 during the first week the phone was on the
18 market."

19 **A.** It does say that. Yes.

20 **Q.** Is that another mistake in a document you submitted to the
21 Court?

22 **A.** It is.

23 **Q.** And Verizon -- excuse me, but when Mr. Roy asked you some
24 questions about Exhibit 113, may not have written it down
25 exactly right, but you said I may have gotten Exhibit 113. Was

1 that your testimony?

2 **A.** Yes, it was.

3 **Q.** In fact, sir, Verizon e-mailed both receipts to you?

4 **A.** That is correct.

5 **Q.** Right after your purchase. Is that right?

6 **A.** Yes.

7 **Q.** And yesterday you were kind enough to download those to a
8 disk for us. Correct?

9 **A.** Yes.

10 **MR. PHILLIPS:** May I approach, Your Honor?

11 **THE COURT:** Yes.

12 (Whereupon a document was tendered to the Court.)

13 **MR. PHILLIPS:** We have -- I'm sorry. This is
14 three-hole punched.

15 (Whereupon a document was tendered to the Court.)

16 **THE COURT:** Thank you.

17 **BY MR. PHILLIPS**

18 **Q.** I've marked as Exhibit 117 what you've provided to us
19 yesterday. Could you just flip through every page, and
20 describe it for us, please?

21 **A.** Sure. This is a receipt. It says "To." It's an e-mail
22 to me. It says, "For your records, a receipt for Order Number
23 464240." And then there's an attachment.

24 The same with the second page. It says, "For your
25 records, receipt for Order Number 464240." And then there's an

1 attachment.

2 And then on the next -- following pages are Exhibits 113
3 and 101 -- or yeah. 101. Is it 101?

4 **BY MR. PHILLIPS**

5 **Q.** Just Exhibit 113.

6 **A.** And then receipt for the purchase is the next one.

7 **Q.** Mr. Norcia, this is your gmail account. Correct?

8 **A.** That is correct.

9 **Q.** And that's the receipt for your order number; what you
10 purchased that day?

11 **A.** That is correct.

12 **Q.** It was sent to you probably minutes after you left the
13 store?

14 **A.** Yes.

15 **Q.** There's a date/time stamp there: 9:28. How much time did
16 you spend in the store?

17 **A.** Probably about ten minutes.

18 **Q.** And if you continue on, these documents that are attached
19 here reference -- cross-reference to the .pdfs that are
20 attached to the e-mails that you obtained from Verizon.

21 **A.** What do you mean by "cross-reference"?

22 **Q.** Well, if you click on the pdf on NOR002, that takes you to
23 one document. Do you see NOR002 in the bottom right?

24 **A.** Yes.

25 **Q.** And if you click on NOR003, the pdf on that page takes to

1 you a separate receipt?

2 A. That is correct.

3 Q. Okay. So you had two different receipts sent to you that
4 day?

5 A. Right.

6 Q. And one of those .pdfs is to the Customer Agreement.
7 That's in NOR004 through 006?

8 A. Correct.

9 Q. And second pdf is to NOR007 through NOR008. Correct?

10 A. I believe that's the receipt from the first e-mail
11 NOR002 --

12 Q. Mm-hm.

13 A. -- sends to NOR007. You can tell because the file size is
14 smaller and it's a shorter document.

15 Q. Thank you.

16 A. So I think those may be in the incorrect order.

17 Q. So, to get it right, then, the NOR002, which is the 6K
18 pdf --

19 A. Correct.

20 Q. -- references to the two-page document, which is NOR7
21 through 8?

22 A. That is correct.

23 Q. Okay. And the next e-mail, which is seven pages, refers
24 to the three-page receipt?

25 A. That is correct.

1 Q. And you had in your possession both of these receipts the
2 day you bought the phone?

3 A. Ah, yes.

4 Q. Could you go to Exhibit 1 in the binder?

5 MR. PHILLIPS: Your Honor, we move Exhibit 117 into
6 evidence.

7 MR. HURLEY: Your Honor, I just want to make one
8 point regarding --

9 THE COURT: If you're going to address the Court,
10 stand up.

11 MR. HURLEY: Oh, I'm sorry. One point regarding this
12 exhibit. It does list Mr. Norcia's e-mail address on there.
13 And we would suggest --

14 THE COURT: Oh.

15 MR. HURLEY: -- that that be redacted prior to
16 admission into evidence. It is personally identifying
17 information --

18 THE COURT: That's fine.

19 MR. HURLEY: -- for now.

20 THE COURT: You can submit it tomorrow. It will be
21 taken into evidence, subject to either redaction of a witness'
22 e-mail account.

23 MR. PHILLIPS: Agreed.

24 MR. HURLEY: Thank you.

25 MR. PHILLIPS: Thank you, Counsel, for bringing that

1 to my attention. I appreciate that.

2 Q. Are you at Exhibit 1 in the binder that was submitted to
3 the Court?

4 A. I am.

5 Q. And you've looked at Exhibit 113 a moment ago with
6 counsel. Right?

7 A. I have. Yes.

8 Q. And that contains all five pages of the receipt that are
9 identical to the pages that are attached to Exhibit 117 that we
10 just went through. Correct?

11 A. Yes.

12 Q. Focusing on NOR004 through 008 -- do you have that in
13 mind?

14 A. Yes.

15 Q. Could you find that behind Exhibit Tab Number 1, please?

16 A. I have it.

17 Q. Could you find that document behind Exhibit Tab Number 1?

18 A. Which document, specifically? Sorry.

19 Q. The document NOR004 through 006.

20 A. Okay.

21 Q. Just kind of have that in your mind.

22 A. All right.

23 Q. Now go to Tab 1 in the binder.

24 A. Okay.

25 Q. Okay. Find that document in there.

1 A. It is not there.

2 Q. So a Customer Agreement signed by you, acknowledging your
3 purchase of the Galaxy S4 and the one-year warranty, is not in
4 the binder?

5 A. It is in the binder under Exhibit 113.

6 Q. It's not under Plaintiffs' exhibits, Exhibit 1?

7 A. Okay. No, it is not.

8 Q. Could you go to Exhibit 113, please?

9 A. Certainly.

10 Q. Can you see on the first page there, .001, WAR items?

11 A. I do. Yes.

12 Q. And it says "WAR6002." Correct?

13 A. Correct.

14 Q. And after that, it says one-year MFG. warranty.?

15 A. It does.

16 Q. And you understood that was the one-year manufacturer
17 warranty?

18 A. As I said, I did not review this document. I signed the
19 keypad.

20 Q. Okay. And then that very day, to your gmail account --

21 A. Mm-hm.

22 Q. -- you received a pdf of both receipts?

23 A. Correct.

24 Q. And do you check your gmail account frequently?

25 A. I do, but I don't always open attachments.

1 Q. But there was nothing preventing you from opening the
2 attachment. Correct?

3 A. That is correct.

4 Q. And, assuming you did, and you read it, you would have
5 seen one-year manufacturer warranty. Correct?

6 A. Correct.

7 Q. And if you had seen it at that time, was there anything
8 that would have prevented you from going to Samsung's website
9 to review that warranty?

10 A. No.

11 Q. Is there anything that would have prevented you, within 30
12 days, opting out of an arbitration provision if you wanted to?

13 A. Had I been aware of it, no.

14 Q. Does the Bigpoint agreement give customers the option to
15 opt out of the arbitration clause?

16 A. Possibly. I'm not sure.

17 Q. Well, let's look.

18 THE COURT: You know what? I think we've covered
19 Bigpoint. Okay?

20 MR. PHILLIPS: Okay.

21 Q. Further down in the receipt, sir, on the second page,
22 there's a heading: Agreement.

23 A. Yes.

24 Q. And the third paragraph down notes that you agree to the
25 current Verizon Wireless Customer Agreement, including the

1 calling plan, et cetera, and other terms and conditions for
2 services and select features "I have agreed to purchase, as
3 reflected on the receipt." Do you see that?

4 **A.** I do.

5 **Q.** And the manufacturer warranty is reflected on the receipt?
6 Yes?

7 **A.** Yes.

8 **Q.** And this next sentence on that document says, "I
9 understand that I am agreeing to an Early Termination Fee per
10 line as referenced on this receipt, limitations of liability
11 for services and equipment, settlement of disputes by
12 arbitration and other means instead of jury trials, and other
13 important terms in Customer Agreement." Did I read that right?

14 **A.** You did.

15 **Q.** And that language is right above your signature; isn't it?

16 **A.** It is.

17 **Q.** And what equipment did you walk out of the store with on
18 May 23rd, 2013?

19 **A.** I walked out with a Samsung S4, the charger, the
20 headphones, and the spare earbuds.

21 **Q.** And above the last line on your receipt it says, "Thank
22 you." Can you read that line, please?

23 **A.** "Contract acceptance date: 5/23/2013."

24 **Q.** And after you signed the receipt and walked out of the
25 store with your phone and the power cord, within 30 days, did

1 you contact Samsung for any reason?

2 **A.** I did not.

3 **Q.** Did you opt out of the arbitration clause?

4 **A.** I did not.

5 **Q.** If you had known about the arbitration clause, accepting
6 your response to Counsel's question, was 30 days enough time
7 for you to decide whether to keep it, or opt out?

8 **MR. ROY:** Objection, Your Honor.

9 **THE COURT:** Sustained.

10 **BY MR. PHILLIPS**

11 **Q.** Is 30 days sufficient time for you to read the warranty
12 that came with the phone?

13 **A.** I would assume so. Yes.

14 **Q.** And within 30 days of the purchase, did you opt out of
15 Samsung's arbitration clause by using the 1(800) number?

16 **A.** I did not.

17 **MR. PHILLIPS:** No further questions, Your Honor.

18 **THE COURT:** Redirect. Redirect. Let me ask you a
19 couple of questions, Mr. Norcia.

20 **THE WITNESS:** Sure.

21 **THE COURT:** So when you went to Verizon to buy this
22 phone the S4.

23 **THE WITNESS:** Yes.

24 **THE COURT:** Did anyone on the Verizon side -- any
25 employee -- tell you about the Samsung product warranty?

1 **THE WITNESS:** No.

2 **THE COURT:** Did you ask about it?

3 **THE WITNESS:** No.

4 **THE COURT:** All right. Did anyone at the -- on the
5 Verizon side tell you about -- if you had a dispute with
6 Samsung, you'd have to go to arbitration?

7 **THE WITNESS:** No.

8 **THE COURT:** Did anyone at Verizon tell you that if
9 you had a dispute with Samsung, you couldn't proceed on a
10 class-action basis?

11 **THE WITNESS:** No.

12 **THE COURT:** Did anyone at Verizon tell you that you
13 ought to look at the Samsung warranty, and if you don't want to
14 go to arbitration, you should opt out within 30 days?

15 **THE WITNESS:** No.

16 **THE COURT:** Okay. Mr. Roy.

17 **MR. ROY:** Thank you, Your Honor.

18 **REDIRECT EXAMINATION**

19 BY MR. ROY

20 **Q.** Mr. Norcia, I'd like you to look at the Complaint that's
21 been put in front of you. I'm not sure if it's been admitted
22 into evidence.

23 **THE COURT:** It's in the record.

24 **MR. ROY:** Right.

25 **Q.** And I'd like you to look at paragraph 32.

1 A. Hang on one second. Yes, sir.

2 Q. Mr. Norcia, were you given the opportunity to read the
3 Complaint before it was filed?

4 A. Not the final version.

5 Q. Did you read any drafts before they were filed?

6 A. I did.

7 Q. And did you make corrections?

8 A. I did.

9 Q. And do you believe you made corrections to paragraph 32?

10 A. I may have.

11 Q. I'd like you to turn to Exhibit 113 that's in evidence.

12 A. Yes.

13 Q. I'd like you to turn to page 113 dot 002.

14 A. Yes.

15 Q. And do you see that towards the top of the page there is
16 isolated the word "agreement"?

17 A. I'm sorry. What does it say?

18 Q. There's just the sole word "agreement."

19 A. Yes. I do see that.

20 Q. And do you see under that, where it says, "I understand
21 that SureResponse services, SureResponse terms of service that
22 had been presented to me, and that I have had an opportunity to
23 review the terms of service included?" Do you see that?

24 A. I do.

25 Q. I'd like you to read that paragraph to yourself. Do you

1 see anywhere where Samsung is mentioned?

2 **A.** Give me one second.

3 I do not.

4 **Q.** I'd like you to go to the second paragraph. Do you see
5 anywhere where Samsung is mentioned?

6 **A.** I do not.

7 **Q.** Now, I'd like you to go to the third full paragraph. Does
8 it say that, "I agree to the current Verizon Wireless Customer
9 Agreement, including the calling plan with extended limited
10 warranty service contract" --

11 That's the contract that you bought. Correct?

12 **A.** Correct.

13 **Q.** -- "if applicable," which you purchased?

14 I'd like you to read the rest of that. Do you see
15 anywhere that Samsung is included there?

16 **THE COURT:** Are you asking him?

17 **THE WITNESS:** I do not.

18 **THE COURT:** Are you asking: Does the word "Samsung"
19 appear?

20 **MR. ROY:** Yes.

21 **THE WITNESS:** It does not.

22 **BY MR. ROY**

23 **Q.** When you signed this Agreement, was it your understanding
24 that your Agreement was with SureResponse and with Verizon,
25 only?

1 A. I thought it was with Verizon, only.

2 Q. Mr. Norcia, you were presented with a document from
3 your -- your employment. Did you have any input in drafting
4 that document?

5 A. No.

6 Q. Had you read that entire document before today?

7 A. I had every now and then, but not in detail.

8 Q. All right. What does the term "warranty" mean to you?

9 A. Ah, it means that a product is covered if something
10 happens to it.

11 Q. Okay. Do you also believe that it is giving you a
12 benefit?

13 A. Potentially. I mean, you save money on a replacement.

14 Q. At any time in 2013, did the word "warranty" mean that you
15 were deprived of some right?

16 A. No.

17 Q. When someone wants to play a game on Bigpoint.com, does
18 that person need to sign up for an account?

19 A. Yes.

20 Q. And when they sign up for that account, do they agree to
21 the terms of service?

22 A. They do.

23 Q. And how is it that they agreed to the terms?

24 A. There's a check box on the page that says, "I agree to the
25 terms of service." And there's a link to the terms of service

1 right there.

2 **Q.** So if at any time there's a dispute, your company can then
3 go back, and show the person that they've agreed to these
4 terms. Correct?

5 **A.** Correct.

6 **Q.** Okay. Is there anything in that binder that you know of
7 where Samsung made you sign a terms of service?

8 **A.** Not that I'm aware of. No.

9 **Q.** Okay. Well, did you ever sign anything regarding terms of
10 service, agreeing to an Arbitration Agreement with Samsung?

11 **A.** I did not.

12 **Q.** Were you presented with a terms-of-service arbitration
13 agreement with Samsung?

14 **A.** I was not.

15 **Q.** Any time before the purchase of your phone, did anyone
16 tell you that you would be bound by certainly paying for the
17 phone to terms of service entering into an arbitration
18 agreement?

19 **A.** No.

20 **MR. ROY:** No further questions, Your Honor.

21 **MR. PHILLIPS:** Briefly.

22 **THE COURT:** Very, very short, Mr. Phillips.

23 **RECROSS-EXAMINATION**

24 **BY MR. PHILLIPS**

25 **Q.** Can you go to Exhibit 103, please? I'm sorry. My fault.

1 Exhibit 113. Third full paragraph there. Full-cap one we've
2 been discussing.

3 A. Yes.

4 Q. On page .002 -- do you see that?

5 A. Mm-hm.

6 Q. Do you see about six lines down, there's the language that
7 starts with the words, "I have agreed"?

8 A. I see that.

9 Q. Okay. So above that, after the comma it says, "and other
10 terms and conditions for services and select features I have
11 agreed to purchase, as reflected on the receipt, and which have
12 been presented to me by the sales representative, and which I
13 have had the opportunity to review." That's in the agreement
14 you signed?

15 A. It is. Yes.

16 Q. And you were asked about what a warranty means. Do you
17 recall that?

18 A. I do.

19 Q. You said it means a benefit of some sort?

20 A. I don't know if it's a benefit, but it's a protection on a
21 product you buy.

22 Q. What else, to your understanding?

23 A. That's what I understand a warranty to be.

24 Q. And do you understand the term "terms and conditions"?

25 A. I do.

1 Q. What does it mean to you?

2 A. It means it's the outline of the agreement that you're
3 signing.

4 Q. Okay. And you've seen the phrase "terms and conditions"
5 associated with the word "warranty." Right?

6 A. I have.

7 Q. And if you wanted to learn what the terms and conditions
8 are, you could go to that document, and read it?

9 MR. ROY: Objection, Your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: Yes.

12 BY MR. PHILLIPS

13 Q. And you chose not to read Samsung's warranty?

14 A. Correct.

15 Q. One last couple of questions. You were asked about this
16 (indicating) Bigpoint agreement. And the point was made that
17 you could go back in time, and just see whenever somebody
18 clicked on the agreement. Right?

19 That's not how it works; is it, sir?

20 A. It is.

21 Q. Under the Bigpoint agreement --

22 Do you have it in front of you?

23 A. Somewhere.

24 Q. Let's find it.

25 A. Yes.

1 Q. Do you see the heading, "Agreement to Terms"?

2 A. Mm-hm.

3 Q. Go to the third sentence. It starts with the word "Each."
4 Do you see that?

5 A. Yes.

6 Q. Each time you use the site or play any of the games, you
7 reaffirm your acceptance of the then-current terms of service.

8 A. It does say that. Yes.

9 Q. So all someone has to do is go back onto your site, and
10 play a game; and, under these terms and conditions or these
11 terms of service, they are supposedly reaffirming that they're
12 bound by this. Correct?

13 A. Yes.

14 MR. PHILLIPS: No further questions.

15 MR. ROY: Just one question, Your Honor.

16 THE COURT: One.

17 FURTHER REDIRECT EXAMINATION

18 BY MR. ROY

19 Q. Mr. Norcia, please pick up the Bigpoint agreement.

20 A. (Witness complies.)

21 Q. Please tell me where it tells you to read the Samsung
22 warranty.

23 THE COURT: The what warranty?

24 MR. ROY: The Samsung warranty.

25 THE COURT: Okay. We don't need that. Thank you.

1 All right. Mr. Norcia, you're excused.

2 We're going to take a five-minute break. I want to talk to
3 counsel.

4 Off the stand, the courtroom. We're done with the
5 testimony.

6 (Recess taken from 11:43 a.m. until 11:53 a.m.)

7 **THE COURT:** All right. Thanks to both parties. That
8 was very helpful. I'm going to give you the option, so you can
9 choose not to exercise -- but the option of submitting no more
10 than 10 pages, one week from today, on the existence and
11 validity of an Arbitration Agreement in this case, based on
12 what we had in the hearing today. So I want it based only on
13 the matters in the record. All of the exhibits tendered are
14 deemed admitted, so you can use all of those, and any of the
15 testimony. One week from today.

16 **MR. HURLEY:** Your Honor, before we --

17 **THE COURT:** Yes.

18 **MR. HURLEY:** -- conclude on this, there are a couple
19 of more evidentiary issues, I believe, that the parties are in
20 agreement. Exhibit 1 was never specifically offered into
21 evidence. That was the equipment purchase receipt.

22 **THE COURT:** No. I admitted all of them. Everything
23 that was tendered to a witness is now admitted. Okay?

24 **MR. HURLEY:** Then there was one other exhibit I'm not
25 sure that we have an agreement, or not.

1 **MR. PHILLIPS:** We do. Exhibit 2.

2 **MR. HURLEY:** It's Exhibit 2, which was a version of
3 the Verizon Customer Agreement that was pulled from the Wayback
4 archive. And it is the one that was in effect at the time of
5 purchase.

6 Number 3, which was the one that was --

7 **THE COURT:** Hold on. So you're withdrawing your --
8 plaintiffs are withdrawing their objection to Exhibit 2? It
9 was your objection. It was plaintiffs' objection that this was
10 an anachronistic exhibit.

11 **MR. HURLEY:** That was because the actual agreement
12 that was being -- that was put in front of the witness was
13 Exhibit 3, which was -- which is the version of the Verizon
14 agreement that's current as of today.

15 Exhibit 2 was not put in front of the witness, which -- I
16 suspect maybe it was intended to be. And that's the one that
17 is pulled from the web archive, and was effective at the time.

18 And if you look at -- that was the one -- it's page 7 of
19 that document. At the end it says, "Last updated 11/29/12."

20 **THE COURT:** All right. So you all agree that
21 Exhibit 2 fits the time frame, and will be deemed admitted.
22 (Trial Exhibit 2 received in evidence.)

23 **THE COURT:** Okay?

24 **MR. PHILLIPS:** Yes. Thank you, Your Honor.

25 **THE COURT:** Yeah.

1 **MR. PHILLIPS:** Just to close the loop, at his request
2 we have assembled a full, complete packet of the exhibits to
3 hand up.

4 (Whereupon a document was tendered to the Court.)

5 **MR. PHILLIPS:** She requested it.

6 **THE COURT:** Oh, yeah. That's fine. Okay. So one
7 week. Everything else stays on ice until I decide the issue of
8 arbitrability.

9 Now I will say there are a number of factors I'm going to
10 be thinking of, and I'm not projecting how I'm going to come
11 out. So you all are experienced enough to know not to read
12 anything into this, but should this case go forward in this
13 Court as opposed to an arbitration forum, you know, I think
14 there are some complicated class-action issues that may come
15 up, based on denial of arbitrability. So there's no need to
16 address that now, but I do like to have people think a little
17 bit about consequences. So I'm not sure how this will come
18 out, but if we do go forward here, you should start thinking a
19 little bit about how the class-action issues may play out. All
20 right?

21 Thanks for coming in, everyone. And hopefully within a
22 week or two of your submission, I'll be able to rule.

23 **MR. ROY:** Thank you, Your Honor.

24 (At 11:56 a.m. the proceedings were adjourned.)
25

1 I certify that the foregoing is a correct transcript from the
2 record of proceedings in the above-entitled matter.

3
4 

5 August 14, 2014

Signature of Court Reporter/Transcriber Date

6 Lydia Zinn